

No. 16374 ✓

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United States
Court of Appeals
for the Ninth Circuit

See ALSO
3106 ✓

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STUCHELL, WILLIAM D. CARPENTER,
HARRY W. STUCHELL, JR.; M. A. WY-
MAN, D. E. WYMAN and M. H. WYMAN,
Co-Partners Doing Business as Eclipse Lumber
Co.,

Appellants.

vs.

STATES MARINE CORPORATION OF DELA-
WARE,

Appellee.

Transcript of Record
In Two Volumes
Volume II
(Pages 289 to 591)

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

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The Court: 174. There is only a short paragraph which relates to the statement that, "The libel charges that between 3:00 and 4:00 o'clock in the afternoon while the libelant's lighter Alfred Collins was being moved astern from alongside the steamer Chalmette which lay on the southerly side of Pier 25, the steamer's propeller was suddenly set in motion and came in contact with the starboard quarter of the lighter, breaking some planks and causing her afterwards to sink, while the libelant's lighter was being moved towards the bulkhead from alongside the steamer Chalmette which lay on the side of the pier." In other words, while the libelant's tug Collins, the moving vessel, was being [247] moved from alongside the moored vessel the moored vessel's propeller was suddenly set in motion and came in contact with the starboard quarter of the moored vessel. Where does that state a line?

Mr. Howard: I don't have the case before me but I notice, your Honor——

The Court: I will let you see the case now.

Mr. Howard: I notice the quotation at the top of Page 12 of my brief from that case mentions the fact that instead of keeping her off by additional lines, which implies that there were lines secured.

The Court: I hope the case throws some light because I am looking for light on it. I have not read the case thoroughly except I have looked at the syllabus. I am doing this now to let Counsel know what the Court thinks it needs in the way of authorities in their briefs. Do you understand?

Mr. Howard: Yes, your Honor.

The Court: I am not deciding the case now, I am just trying to let you know what the Court feels it needs that I have not already received. Will you pause just a minute? I want to get that 1935 A. M. C.

(Brief pause.)

The Court: Have you seen that case?

Mr. Howard: Yes, your Honor. [248]

The Court: Is that the one you referred to?

Mr. Howard: Yes; it is.

The Court: Did it have the lines in position in the situation as they were here?

Mr. Howard: The syllabus of the case states that, "A scow belonging to the lighterage company was lying moored to the side of the Hektor."

The Court: In other words, the moving ship, so-called, was moored, is that right?

Mr. Howard: Yes, your Honor. The ship was at the dock, moored to the dock, and the syllabus says, "A scow belonging to a lighterage company was lying moored to the"—ship.

The Court: Lying moored to the moored ship, and that is what the respondents claim was the situation here.

Mr. Howard: The syllabus goes on to state that, "Employees of the stevedore company moved the scow by hand aft along the side of the ship."

The Court: The employees of who?

Mr. Howard: Of the stevedore company, "moved the scow by hand aft along the side of the ship."

The Court: That was an affirmative act by someone not in the employ of the ship, I assume?

Mr. Howard: That's right, your Honor. [249]

The Court: And not in the employ of the moving tug?

Mr. Howard: That's correct, your Honor. And the Court found that there was no liability on the ship in that situation. The Court did find the stevedoring contractor liable for negligent moving of the scow under the stern of the ship.

The Court: Did it find the moving tug or the moving vessel or the owners of it liable for negligence?

Mr. Howard: No.

The Court: Then I do not see that that is a patent case on the fact, do you?

Mr. Howard: This was cited in the brief to show the nonliability of the steamer, not to show the liability of the tug or the barge.

The Court: Very well.

Mr. Howard: The other case, your Honor, which we discussed earlier, the Chalmette case in 52 Federal——

The Court: 52 Federal or 54 Federal?

Mr. Howard: 52 Federal.

The Court: Yes; that is right, the Chalmette is in 52.

Mr. Howard: Yes, your Honor. [250]

The Court: Page 174.

Mr. Howard: That case indicates that a lighter had come alongside the vessel and was discharging cargo and before the vessel was ready to depart

people on the lighter attempted to move it alongside the ship by means of the lines. There was no tug involved there, apparently. The men were moving it on the lighter either as a self-propelled lighter or else by manipulating the lines. It is not clear from the opinion.

The Court: From what vessel to what vessel were the lines extending?

Mr. Howard: The lines were apparently extended from the lighter to the ship.

The Court: Anyway they were between the moored ship and the servicing vessel. It was moved and was in motion at the time of the accident, therefore it was the moving vessel, is that not right?

Mr. Howard: Yes, your Honor. The opinion states, "The master of the lighter testifies that before proceeding to haul his lighter astern"—from which I gather that the movement of the lighter was originated by the man who was on the lighter or the scow, but by means of manipulating the lines between the ship and the lighter, and the opinion concludes at [251] the end in the part which I believe I have quoted that, "The lighter should have protected against damage coming under the propeller or rudder of the ship, among other things, by keeping her off by additional lines." That is the only reference in the opinion to lines.

The Court: There is no dispute about who was doing the moving. In this case I suppose there will be a lot of argument about who was doing it, in

view of the fact that the lines came off the moored ship down to the moving tug.

Mr. Howard: Well, there is nothing in this case to indicate the lines didn't come off the ship either, your Honor, in the Chalmette case.

The Court: There is something in this case that somebody might argue was distinguishable in that the case says the moving of the moving vessel was being done on board the moving vessel, whereas in this one, as I understand it, the respondents contend that the moving was being not on the so-called moving vessel by any force being applied not on the moving vessel but by a force that was being applied under the control of the ship. However——

Mr. Howard: That may be their contention. We haven't heard the evidence on that yet.

The Court: No; that is right. Now if you [252] can find any more cases on this, I expect you have done a lot of searching, but if you can find any more cases I ask you to do it, because this is one of the points, one of the critical points in the case. Possibly there could be others arise later, but this seems to be one of them now.

Mr. Howard: I appreciate that, your Honor, and I'll undertake to find——

The Court: And I wish opposing Counsel would do everything he can to find cases on this subject, especially if they involve a line situation more like this than anything that I have been reminded of yet, namely, lines furnished by the moored ship and put onto and made fast to the so-called moving vessel, after which the accident happened. I wish

you to proceed now, though, with the taking of testimony.

Mr. Howard: May I resume the witness stand, your Honor?

The Court: You may. You may resume the reading of the deposition if you are ready. I would like to have returned the Federal Reporter.

(The volume was returned to the Court.)

The Court: Page 46.

Mr. Biele: Your Honor, may I suggest we go back to 45 and take up the question there? [253]

The Court: Any objection, Mr. Howard?

Mr. Howard: No objection.

The Court: You may do that.

Mr. Biele: This will be the last question on 45.

(The reading of the deposition of Otto K. Boltz was continued as follows:)

DEPOSITION OF OTTO K. BOLTZ

“Q. What I would like you to do, Chief, is to point out any entry in Exhibit 6 showing that any engineer logged that that light was out prior to the accident?

“Mr. Gerity: The light was out?

“Mr. Hanrahan: The light was in position.

“A. That is something I don't know, because it is little things, you know, because the light—I don't write this logbook, that is not the engineer supposed to write. It must be in the deck log for sure because that is the people that put the bar

(Deposition of Otto K. Boltz.)

over. (Indicating in logbook.) Here is where Pilar signed in that section there, that the light was over the stern—that is the 4 to 8 section.”

The Court: Wait a minute. I saw “Pilar” a minute ago but I do not see “Pilar” now. Where is that?

Mr. Howard: The fourth line from the top, “Pilar.” [254]

The Court: “Here is where Pilar signed in that section there.” You may proceed.

(The reading was continued as follows:)

“Q. And what time was that entry made?

“A. It is right after finished with engine.”

The Court: It does not state the time, is that it, Counsel on both sides?

Mr. Howard: It may have appeared earlier in the deposition. I don’t recall, your Honor.

The Court: It is all right, then. We will not interrupt the reading. Proceed.

(The reading was continued as follows:)

“Q. I would like to get back once again to the entry which you made starting with the words ‘Propeller warning’—that is in your own handwriting? A. Naturally.

“Q. The point I am trying to make is, and I think you will agree if you understand the question, you had no personal knowledge that the propeller warning lights were in place?

(Deposition of Otto K. Boltz.)

“A. No; I never have to go even to look at them because it is not my business.

“Q. So that is just based on an assumption?

“A. That is right, but I mean I wish to point out that I absolutely have nothing to do with the warning lights, [255] taking them in or putting them out, because that strictly comes in the deck department.

“Q. I understand that, but what I am trying to bring out is that in this entry many of the things in here are things which I do not think you have personal knowledge of, isn't that so?

“A. Well, I just put it down because, like I say, we log it every watch because it is already logged here on this section, consequently I put it in. It says on the 4 to 8 watch that the warning light is in place, and signed by the engineer on watch in the log.

“Q. I am talking about before the accident.

“A. Well, then, we were in docking process. Then there is nothing out—you have nothing out when you are docking.

“Q. Will you look at that entry again and tell me which part of that entry which I am pointing to that you made in your own handwriting?

“A. All of it.

“Q. How much of that do you have personal knowledge of?

“A. Well, of everything, all the inspections were made by me and the other gentlemen included.

(Deposition of Otto K. Boltz.)

“Q. Will you read the first sentence again?

“A. (Reading): ‘Propeller warning light and sign in place.’

“Q. You have no personal knowledge whether that is so or not? [256]

“A. No; I wasn’t there when they put it over, that’s right.

“Q. Now, take the next sentence.

“A. (Reading): ‘At 1845 barge E-15 broke propeller and rudder while being pushed by tug Lea Moe.’

“Q. You have no personal knowledge of that either, have you? A. No.

“Q. Now read the next sentence.

“A. (Reading): ‘To spot barge at No. 25 at No. 5 hatch.’

“Q. You have no personal knowledge of that either, do you? A. No.

“Q. Now take the next sentence.

“A. (Reading): ‘Witnessed by chief mate.’

“Q. You put that in because he told you he saw it?

“A. Because he took the time, that is correct.

“Q. You did not see it?

“A. No; I am not a deck man.

“Q. Read the next sentence.

“A. (Reading): ‘Immediate inspection was made by master, chief mate and chief engineer.’

“Q. You do have knowledge of that?

“A. Definitely.

“Q. Is that the end of it?

(Deposition of Otto K. Boltz.)

“A. Then comes the propeller inspection after that, and then it was when the Coast Guard came down that evening. [257]

“Q. And you have personal knowledge of that?

“A. Oh, yes; we actually got a boat and went out.

“Q. Now, on a ship such as the Cotton State when you get the signal ‘Finished with engine,’ what do you have to do before you start the jacking engine?

“A. Close off the main stops and open up your throttle drain to release the pressure in the running.

“Q. During that process does steam ever get to the turbine so as to turn the propeller somewhat?

“A. Oh, no, it can’t; there are double stop valves, the main boiler stop and the bulkhead stops.

“Q. Now, it is your testimony that the propeller turns a full revolution on the jacking gear in seven to eight minutes? A. That’s correct.

“Q. Then is it true that in order for three blades of the propeller to be damaged it would be necessary for the propeller to turn at least half a turn? A. Oh, it will have to, yes.

“Q. And that would be between three and a quarter and four minutes?

“A. That should be that way.

“Q. It would be at least that, wouldn’t it?

“A. Well, it should be.

“Q. If you got a telephone call from the deck

(Deposition of Otto K. Boltz.)

department [258] that told you that something was fouling the propeller or apt to foul the propeller, how long does it take to stop the jacking gear?

“A. Oh, a few seconds to run down and push the button.

“Q. If you were standing right at it you would just have to push a button?

“A. No; you got to climb over a casing because the jacking gear is on top of the turbine, the reduction gear housing.

“Q. When you get to it, what do you do—just push a button?

“A. Yes; push a button that opens up the switch.

“Q. And then the propeller stops immediately?

“A. The jacking gear stops as soon as you push the button to stop the motor.

“Q. Now, at the time you got the finished with engine and you left the engine room, you knew nothing about any possibility of scows coming alongside? A. Oh, no, how would I?

“Q. You would not unless someone on deck told you? A. That is correct.

“Q. And no one on deck did say anything to you? A. No.

“Q. Is there a telephone communication between the engine room and deck department?

“A. Yes. [259]

“Q. Is there a telephone on the bridge?

“A. Yes.

(Deposition of Otto K. Boltz.)

“Q. And is there a telephone at the stern of the ship? A. Yes.

“Q. And were these telephones in proper operating condition on January 10, 1957?

“A. As far as I know.

“Q. And when you left the engine room at the time finished with engine was rung you gave no instructions to anyone because you thought they were not necessary, is that right?

“A. That's correct.

“Q. What was the fourth assistant engineer's name? A. Pilar.

“Q. How long had he been on the ship?

“A. Well, he just joined the ship; he was a new engineer.

“Q. When did he join the ship?

“A. I don't know.

“Q. Did he join at Seattle?

“A. He joined at Seattle, that's right, he was from Seattle, that is correct.

“Q. And he joined the ship there?

“A. That's correct?

“Q. What do you know about his qualifications as an engineer? [260]

“A. He is a licensed chief engineer.

“Q. Did you see his license?

“A. I certainly did; it had to be posted.

“Q. Do you remember what license he had?

“A. 3, 5—third issue of chief engineer.

“Q. And had you worked with him at all during the time he was on the vessel up to the time of

(Deposition of Otto K. Boltz.)

this accident? A. No.

“Q. So you had no personal knowledge of his qualifications, but you knew he had a license issued by the Coast Guard, is that right?

“A. That’s right.

“Q. Now, when you turn the propeller on the jacking gear, the real purpose of that is not to turn the propeller but to turn the turbine?

“A. You can’t turn the turbine without turning the propeller.

“Q. But the reason you do it is to turn the turbine, isn’t it?

“A. That is correct, to cool her.

“Q. On ships other than turbine driven ships it is not necessary to turn the propeller on a jacking gear ordinarily, is it?

“A. Not for cooling purposes—I will say it this way—I could go into a lengthy affair that way, but not for [261] cooling purposes you don’t have to turn.

“Q. Vessels other than turbine driven ships when they arrive at a dock and are mooring they ordinarily do not turn their propeller on the jacking gear, do they?

“A. I rather not answer that question. If I do I wish to take off the record. I can’t answer that question because I have nothing to do with other types of engines except turbines.

“Q. While the propeller is turning on a jacking gear, if the propeller was menaced by anything, in

(Deposition of Otto K. Boltz.)

the engine room you would have no way of knowing that unless the deck department reported it?

“A. Naturally.

“Q. And in that situation of menace you would expect the deck department to notify you?

“A. They notify us about everything. When they start the engine they have to notify us that everything is clear—they always do and it is——

“Q. After the engine started and the propeller was turning, if anything menaced the propeller at the time, you would expect the deck department to notify you, wouldn't you?

“A. They would, because the mate is on duty night and day.

“Q. And that is his duty, isn't it?

“A. That is his duty to see that everything is clear on the [262] vessel.

“Q. When you start turning the propeller on the jacking gear prior to leaving a port, you telephone to the deck department to make sure the propeller is clear?

“A. Sometimes telephone and sometimes the engineer goes to see the mate personally and asks him to have a look at the propeller to see that it is clear, he wishes to turn the propeller. Then as a rule the mate, whoever is on watch, phones down and lets the first assistant know, ‘Go ahead, everything is clear,’ and then there is an entry made in the logbook and bell book too, but always in the logbook, ‘Permission received from bridge to turn propeller.’

(Deposition of Otto K. Boltz.)

“Q. Why do you ask the deck department whether the propeller is clear when you are starting the jacking gear before leaving port?

“A. For the reason, due to loading operations, especially in foreign ports, you have all kinds of barges and boats around and so forth—that is why we have to ask them.

“Q. And if there are barges or something else in the way of the propeller and you start the propeller on the jacking gear, it is reasonable to expect that the propeller will be damaged, isn't it?

“A. Any time a propeller strikes a heavy object you can [263] expect damage.

“Q. And that is true even when it is turning on the jacking gear? A. Certainly.

“Q. Is it improper for a vessel such as the Cotton State not to have a licensed engineer in the engine room at all times?

“A. Yes; it is improper.

“Q. What hours did the fourth assistant engineer work on January 10, 1957?

“A. Well, I have to refer to the logbook. I can't remember that. (Referring to logbook.) He was on until the next morning, until 8:00 a.m.

“Q. Starting when?

“A. From after finished working hours in port—that is from 5:00 o'clock.

“Q. From 5:00 o'clock to 8:00 a.m. he was on watch? A. That's right.

“Q. Wasn't he on prior to 5:00 p.m. that day?

“A. No; not as far as I recall.

(Deposition of Otto K. Boltz.)

“Q. Doesn’t the fourth assistant engineer do day work on the Cotton State?

“A. Every engineer does day work.

“Q. Can you tell me either by looking at your log or otherwise whether or not it is a fact that the fourth [264] assistant had come on duty on the morning of January 10, 1957?

“A. In the morning? No; I can’t recall that. I don’t think it is in the logbook either.

“Q. Will you look at the log and see?

“A. (Referring to log): He was not on what you call active watch—but a C-2, due to the nature of the plant, besides the night engineer to avoid any trouble or the plant kicking out, the company always has also on a C-2 kept one of the ship’s engineers on board on security watch. If you look in the logbook you will see it says night security. He is not a watch engineer. Mr. Kane and Mr.—can I see the smooth log? (Referring to Libelant’s Exhibit 7.) Mr. Kane and Mr. Provost were the regular night engineers on duty. Mr. Pilar was night security engineer staying on board in his quarters in case he was needed by the night engineer.

“Q. Now, starting at midnight on January 9th what hours did Mr. Pilar work?

“A. Well, that day he worked, like I say, he assisted me in shifting ship with Mr. Greene.

“Q. No; I am going back a day now—January 9th at midnight, or 12:01 a.m. on the 10th.

“A. On the 10th Mr. Pilar was not working,

(Deposition of Otto K. Boltz.)

it was Mr. Greene was night security [265] engineer.

“Q. When did Mr. Pilar first go to work on the 10th?

“A. Well, he probably worked during the day.

“Q. What time did he start?

“A. 8:00 o'clock the work starts in the morning in the engine room. I am not positive if he worked, but I presume, because as a rule all the day engineers turn to at 8:00 a.m. if the ship has a night engineer in port.

Q. If your assumption is correct, starting at 8:00 a.m., did he work then to 5:00 p.m. on day work?

“A. He worked longer because he assisted me in shifting the ship on the 10th.

“Q. Then he worked from 8:00 a.m. until the time finished with engines was rung at Everett, Washington?

“A. Yes; then secure and everything—it isn't finished with engine that everyone comes out of the engine room, you know.

“Q. And after that he was night security engineer, is that right?

“A. That's right, that means he remained on board in case the night engineer needs him.

“Q. And that would be until 8:00 o'clock the next morning? A. Right.

“Q. Who was the watch engineer at the time of the accident? A. Mr. Kane. [266]

“Q. Referring to Exhibit 8, what time was

(Deposition of Otto K. Boltz.)

finished with engines at Everett on January 10th?

“A. (Referring to log): 1835.

“Q. How do you start the jacking gear? Is it just a question of pressing a button again?

“A. No; you got to engage it.

“Q. How do you do that?

“A. You got an engaging gear in the back of the high speed pinion shaft. By doing so you have to lift up on a catch, which is a safety device, and also take off the top plate on the jacking gear and take this out and reverse it, turn it over. There is a horn projection on this plate which keeps the jacking gear from being engaged while the turbine is turned by steam, so this plate has to be taken out, and the horn faces upward. Then the jacking gear can be engaged by turning the wheel until the two clutches come together.

“Q. How long does that take?

“A. Takes about a minute.

“Q. And how long after you receive the finished with engine order is it before you can start using the jacking engine?

“A. A couple of minutes at the most—the wheels are right close to the main engine, the steam stops are located close to the main engine. [267]

“Mr. Gerity: Steam stop valves, you mean?

“The Witness: Yes, steam stop valves are located close to the main engine.

“Q. I think I have asked this before, but before you start the jacking gear no one from the engine

(Deposition of Otto K. Boltz.)

room comes up to look at the propeller, you rely on the deck department?

“A. Sure, because there is a licensed deck officer in the vicinity of the stern to notify us in case there is any obstruction in the vicinity of the propeller.

“Q. And you depend on him?

“A. I certainly do. He is a qualified man.

“Q. Referring to Exhibit 7, in whose writing is this?

“A. That is my writing—all of it.

“Q. And is this a copy?

“A. That is a copy of the rough log and that goes for references.

“Q. So if there are any entries in the rough log, Exhibit 6, which are assumptions, those same assumptions will be carried into the smooth log?”

Mr. Howard: That question was not answered.

The Court: You see, that is the vice of one making a statement without putting words in it that denote that you are asking a question instead of merely throwing out an explanation. Go on to the next question. [268]

“Q. If there are any assumptions in the rough log, those assumptions, if any, are carried to the smooth log?

“A. That is not as a rule assumptions because I am going to see the deck officer on watch to get the correct times when incidents occur. I am supposed to log those the same as they do.

“Q. But generally speaking you carry over into

(Deposition of Otto K. Boltz.)

the smooth log what you previously put in the rough log? A. That's correct.

“Q. Where is this entry I am pointing to in the rough log found in the smooth log? I am pointing to the entry starting ‘Propeller warning.’

“Mr. Gerity: There is a slew of those entries. It is written vertically along the edge of the page that counsel is referring to?

“Mr. Hanrahan: That is correct.

“A. The rough log is the official.

“Q. I don't see it entered.

“A. No, it doesn't have to be in there because this is the official log—but all the inspections are in there.”

The Court: Court will be at recess for about ten minutes.

(Short recess.)

The Court: You may resume the reading of the deposition. [269]

(The reading of the deposition of Otto K. Boltz was continued as follows:)

“Q. So the entry that Mr. Gerity just found in the smooth log”——

The Court: Just as a reminder state the number of the page, please.

Mr. Biele: The top of Page 61, your Honor.

The Court: You may proceed.

(The reading continued as follows:)

(Deposition of Otto K. Boltz.)

“Q. So the entry that Mr. Gerity just found in the smooth log is a copy of the entry in the margin of the rough log, the page in the rough log dated January 10-11, 1957?

“A. That’s correct. We have to keep the smooth log.

“Mr. Hanrahan: That is all I have.

“Redirect Examination

“By Mr. Gerity:

“Q. Chief, in the dating of the engine room log-books the times are kept from one noon until the next noon?

“A. From noon to noon.

“Q. As distinguished from the deck log which is kept from midnight to midnight?

“A. That’s right.

“Q. At the time of this incident when the jacking gear stopped, as reported to you by Engineer Kane, was [270] Engineer Kane on duty in the engine room? A. Yes, sir.

“Q. You talked about putting over warning signs for the propeller. You have described for us a warning board which is 5 feet long and 3 feet wide with red lettering ‘Keep clear of propeller.’ Is or is not that a permanent fixture over the side of the rail?

“A. That is a permanent fixture over the side of the rail.

“Q. Bolted in place? A. That’s right.

(Deposition of Otto K. Boltz.)

“Mr. Hanrahan: Would you identify that better?

“Mr. Gerity: I can’t identify it better. I said a board 5 feet by 3 feet with red lettering ‘Keep clear of propeller.’

“Q. When your jacking gear is in reverse motion how does the propeller turn, counterclockwise or clockwise? A. Either way.

“Q. But when the propeller is turning astern?

“A. It turns counterclockwise.

“Q. And when it is turning ahead?

“A. It turns to the right.

“Q. You say that Mr. McLaughlin was aft when the vessel moored?

“A. That’s right. [271]

“Q. Are you absolutely certain of that of your own knowledge?

“A. I didn’t see him, but he told me ‘I seen a barge come into the propeller.’

“Q. But you did not know if he was aft at the time of tying up? A. No, but he told me so.

“Q. That is your recollection? A. Yes.

“Q. The watch officer is not on the stern when the Cotton State docks after the mooring lines are secured and the warnings are put over—there isn’t a watch officer standing there all the time, is there?

“A. No, but he makes a round of the decks.

“Q. Now, with respect to the warning signs being in place, counsel has pointed out to you that they are only in place—with respect to your entry of

(Deposition of Otto K. Boltz.)

the 10th, starting in the margin of Exhibit 6, 'Propeller warning lights and signs in place'—I ask you to inspect your log book, if you will, and tell me how many entries starting on page 1, you have similar entries under date of January 6th.

“(Discussion off the record.)

“Mr. Gerity: You can put it this way. The log-books are the best evidence. Counsel will not [272] disagree with me that at the end of every watch similar entries are made of the warning signs in place, that is a regular routine?

“Mr. Hanrahan: I will agree that there seems to be a regular routine to put such an entry in the logbook.

“Q. When you receive reports of incidents on deck, Mr. Boltz, are they made to you in the regular course of business in your capacity as chief engineer?

“A. Well, not exactly, I mean what happens on deck.

“Q. If it is necessary to advise you, are they made to you in your capacity as chief engineer?

“A. Yes, especially in this case because it concerned the propeller, you see.

“Q. When you made the entry in Exhibit 6 after the accident, timed at 1845, with respect to the warning lights, were those warning lights that you have described to us when you went on the dock and saw the port side and saw the starboard

(Deposition of Otto K. Boltz.)

side where they were damaged—were they of your own personal knowledge?

“A. That’s right, that was when I went with the captain and the mate on the dock.

“Q. You have also told us when you went up on deck you saw this barge off your starboard quarter, and lumber was floating around on the water? [273]

“A. Yes.

“Q. Was the lumber also in the area of the propeller?

“A. Yes, it was drifting all over the whole area.

“Q. Is it not a fact that there is a light which shows up when the jacking gear is in motion, which is visible to an engineer?

“A. Yes, on the engine alarm panel.

“Q. And that light will continue to burn as long as the jacking gear is turning?

“A. That’s correct.

“Mr. Gerity: That is all I have.

“Recross-Examination

“By Mr. Hanrahan:

“Q. Where were you when you first saw Mr. Kane on the night of January 10, 1957?

“A. When the accident happened?

“A. No, where were you when Mr. Kane and you first spoke to each other on the night of January 10th?

“A. I was right outside my door close to the engine room door.

(Deposition of Otto K. Boltz.)

“Q. You were standing in the companionway?

“A. In the companionway, yes.

“Q. And is that the time he came to you and told you that the jacking engine was not turning over?

“A. That the jacking engine had stopped—if you are [274] referring to this accident.

“Q. That is referring to this accident. Was that the first time you had seen him that night?

“A. That’s right.

“Q. Do you know what time that was?

“A. That was just prior to the accident.

“Q. Well, you don’t know when the accident occurred, do you?

“A. I don’t know the right time when the accident occurred. Like I said, if I don’t know the times I get it from the deck because I always like to make an entry for my own satisfaction.

“Q. Just one more: At the time you had that conversation with Mr. Kane you did not know whether the accident had happened or not at that time? A. I didn’t know nothing.”

Mr. Howard: The libelant offers that deposition.

The Court: This deposition is received in evidence as a part of the libelant’s case in chief with like effect as if the witness were personally present, were sworn and testified from the witness chair. Next?

Mr. Howard: I would like to offer the testimony of Mr. Kane by deposition.

The Court: Kane, K-a-n-e, Mr. Howard? Was [275] that the name?

Mr. Biele: Your Honor, with your Honor's permission may Mr. Crutcher read the questions?

The Court: He may do so, and may I suggest that you speed up the reading, and any time that either becomes tired physically, do not hesitate to let someone else spell you off. Admiralty cases commonly have a large percentage of the proof in the form of depositions and we have to read them, and I find that those who have a special knack at speeding up the reading do, it seems to me, a great service to both sides, their own side and the other side and the Court, all. You may proceed.

Mr. Crutcher: Thank you, your Honor. I will start on Page 3 with the direct examination by Mr. Howard.

The Court: Mr. Howard, do you have a copy of this deposition?

Mr. Howard: Yes, I have my copy.

The Court: Proceed.

Mr. Crutcher: Page 3, Line 3.

(Thereupon, the deposition of Thomas F. Kane was read as follows:)

DEPOSITION OF THOMAS F. KANE

“Q. Will you state your full name, Mr. Kane?”

The Court: Now wait a moment. Has the [276] libellant rested, or what do you mean?

Mr. Crutcher: I beg your pardon, your Honor,

(Deposition of Thomas F. Kane.)

this is offered by Mr. Howard and Mr. Howard will read the answers as before, is that right?

Mr. Howard: That's agreeable with me, your Honor.

The Court: Proceed.

(The reading was continued as follows:)

“Q. Will you state your full name, Mr. Kane?

“A. Thomas F. Kane.

“Q. What is your age, sir?

“A. Sixty-seven.

“Q. Where do you reside?

“A. 2565 Magnolia Boulevard, Seattle.

“Q. Do you hold any licenses issued by the United States Coast Guard?

“A. Yes, I do; Chief Engineer Steam and Chief Engineer Diesel, Unlimited Horsepower, Any Tonnage.

“Q. What issue on that license do you recall?

“A. Oh—— (pause)

“Q. When did you first get it, the Chief Engineer's License?

“A. The Chief Engineer's License?

“Q. The Chief Engineer's License.

“A. 1915.

“Q. Prior to that did you have your license as an assistant? [277]

“A. As an assistant, yes.

“Q. What is your present employment?

“A. Relief engineer.

(Deposition of Thomas F. Kane.)

“Q. How long have you been working as a relief engineer?

“A. Since September, 1956.

“Q. Prior to that time, what was your employment?

“A. Chief engineer of an M.S.T.S. vessel.

“Q. What vessel? A. The Kern.

“Q. How long were you chief engineer on that vessel?

“A. Just a brief period; ten days.

“Q. Prior to that, what was your employment?

“A. Superintendent of construction for the Fraser Boiler Company in connection with the construction of a power plant at the Whidby Island Naval Air Station.

“Q. For how long did you hold that position?

“A. Fifteen months.

“Q. That would have been during what months? A. 1954 and 1955.

“Q. Prior to that, what was your employment?

“A. United States Inspector of Vessels, Coast Guard.

“Q. Did you hold a commission in the United States Coast Guard? A. Yes, sir, I did.

“Q. What was your rank, the highest rank you attained? [278]

“A. Full Commander.

“Q. What was the date of your retirement?

“A. June 1, 1952.

“Q. How many years did you serve as a commissioned officer in the United States Coast Guard?

(Deposition of Thomas F. Kane.)

“A. Ten years.

“Q. And during that period what type of work were you engaged in?

“A. Ship inspection, ship construction, boiler construction, dry dock inspection, inspection of machinery, installation for the United States Army in the Ninth and Eighth Service Commands.

“Q. Did that work involve inspections particularly as to engineering equipment on the Merchant Marine vessels? A. Most of it.

“Q. Most of it. Have you been regularly employed by the States Marine Lines at any time?

“A. No, never.

“Q. Have you been regularly employed by any other steamship company? A. Recently?

“Q. Since your retirement from the Coast Guard.

“A. No, not outside of the M.S.T.S.

“Q. Just the M.S.T.S., and that is a branch of the United States Army? [279]

“A. That is right.

“Q. How do you now obtain your assignments to serve as a night engineer?

“A. Through the Marine Engineers' Beneficial Association.

“Q. Is that a system of dispatching?

“A. That is right.

“Q. Does it involve boarding of vessels as a night engineer in rotation with other engineers?

“A. Yes, it does.

“Q. Mr. Kane, do you recall having served as

(Deposition of Thomas F. Kane.)

night engineer on the Cotton State in January of 1957? A. Yes, I do.

“Q. Will you state how many shifts or how many nights you served on that vessel?

“A. I believe four nights.

“Q. Where was the vessel at the time that you were putting in these shifts as night engineer?

“A. The first night was down here at Pier 37. I believe it was Pier 37. The next night was at Everett, and I believe after that it was at Todd's Dry Dock Company at Seattle.

“Q. At Seattle? A. Yes.

“Q. And what hours did you work as a night engineer on the Cotton State? [280]

“A. From 4:00 p.m. to 12:00 midnight.

“Q. What type of vessel is the Cotton State?

“A. A general cargo vessel.

“Q. What type of propulsion machinery does she have? A. Steam turbines.

“Q. Calling your attention particularly to the night that you said you worked aboard the vessel at Everett, Washington, did you proceed from Seattle to Everett aboard the vessel?

“A. No, I drove from Seattle to Everett.

“Q. Where in Everett did you join the vessel?

“A. Port Dock No. 1, I believe is the name of the dock.

“Q. What time did you arrive at Port Dock No. 1 approximately? A. Oh, about 6:20.

“Q. With a twenty-four hour clock, that would be about 1820 hours? A. 1820 hours.

(Deposition of Thomas F. Kane.)

“Q. Did you observe the Cotton State at that time, and if so, where was she located?

“A. She was approaching the dock apparently from Seattle.

“Q. What was the condition of the visibility at that time?

“A. It was dark. The vessel's proper lights were burning.

“Q. As the vessel approached the dock and the lines were secured to the dock what, if anything, did you do during [281] that period?

“A. I walked aft along the dock. The vessel was port side to the dock. I walked along the dock to observe the condition of the blinker lamp and the warning sign under the port counter.

“Q. What prompted you to do that?

“A. It is a part of my routine duty.

“Q. Prior to or at the time you commenced your service on the Cotton State did you receive any instructions regarding the use and observation of the use of the propeller warning boards and flashing lights? A. On the vessel?

“Q. On the vessel. A. Yes, I did.

“Q. From whom did you receive them?

“A. The chief engineer.

“Q. When did you receive those instructions?

“A. When I first boarded the vessel at Seattle.

“Q. That would have been on the night previous to your service aboard the vessel at Everett?

“A. The 9th of January.

(Deposition of Thomas F. Kane.)

“Q. What instructions did you get from the chief engineer at that time?

“A. I was asked if I was familiar with the importance of the warning signs and the blinker lamps, and I said I [282] was familiar with the requirements, and I was instructed to make an entry in the logbook as to the condition of those elements each watch.

“Q. When you say ‘elements,’ you refer to what?

“A. The warning signs and the blinker lamps.

“Q. Going back now to the time when you said that you were on the dock, Port Dock No. 1 at Everett, will you state when your observation was made with respect to the port warning board and flashing lamp with reference to the time that the vessel arrived alongside the dock?

“A. It was dark, and I waited until the vessel was properly up against the dock. The vessel was just about secured when I made certain that the warning signs and the blinker lamp were in place and in operating condition.

“Q. Where were you on the dock when you made that observation?

“A. About abreast of those elements.

“Q. Was the gangway lowered and in place at that time? A. Not quite.

“Q. Could you observe from that position on the dock whether the starboard warning board and the flashing light was in place and lighted?

“A. No.

(Deposition of Thomas F. Kane.)

“Q. After you made this observation as to the port warning board and flashing light, what did you do next? [283]

“A. I went aboard the vessel at 1835, when the gangway was down.

“Q. And where did you go?

“A. To the chief engineer's cabin.

“Q. And where is that located?

“A. On the port side at midship.

“Q. Did you find the chief engineer in his quarters? A. No, I didn't.

“Q. What did you do next?

“A. I walked aft on the starboard side and observed the condition of the warning sign and of the blinker lamp in that area.

“Q. Referring to which side of the ship?

“A. The starboard side.

“Q. And from what point on the ship did you undertake to observe the condition of the starboard warning board and flashing light?

“A. On the poop of the main deck.

“Q. And how did you make that observation?

“A. By leaning over the bulwark and looking down.

“Q. How long was that after you boarded the vessel at 1835 hours?

“A. Perhaps three minutes.

“Q. What did you observe from that position as to the operation of the starboard warning board and flashing light?

(Deposition of Thomas F. Kane.)

“A. The warning sign was in place and it was visible, and the blinker lamp was in operation.

“Q. Now, will you describe for us what the warning board consisted of that you mentioned?

“A. It is a long narrow strip, I would say one by six, with black markings or a line alternating black and white for the length of the board.

“Q. What lettering, if any, is there on the board?

“A. I am not quite certain, but I think on that vessel it read, ‘Warning propeller turning.’

“Q. Will you describe the flashing light to which you have referred?

“A. Oh, it flashed about every ten seconds.

“Q. And the color? A. Red.

“Q. And where was the light located with reference to the warning board that you have described? A. Slightly above.

“Q. And where was the warning board located with reference to the poop deck, or deck level of the vessel at its stern?

“A. Perhaps six foot above sea level.

“Q. And how was it affixed in that place?

“A. The board was secured by a line forward and a line aft [285] brought up to the deck and secured to the deck railings.

“Q. Did you see anybody else on the stern of the vessel at the time you walked aft to make this observation?

“A. There were several crew members stowing

(Deposition of Thomas F. Kane.)

lines or engaged with their duties the same as I was. I paid no attention to them.

“Q. Where did you go after you had walked aft to this position to observe the starboard warning board and flashing light?

“A. When I was certain that the condition was in order, I proceeded to the chief engineer’s cabin.

“Q. Did you find him there?

“A. He was outside his cabin in the passageway.

“Q. Did you remain in that area?

“A. I did for a brief time.

“Q. And where did you go then?

“A. Back in the engine room. I went to the engine room.

“Q. When you first went into the engine room did you meet any of the engineering officers of the ship? A. The second engineer, Mr. Green.

“Q. And where did you meet him?

“A. On the upper level.

“Q. Did you have any conversation with him at that time?

“A. I asked or we had the conventional conversation, and I asked him how the plant was going and other important [286] things, and he said he would be back in a few minutes, that he was going up either to take a sounding or he had some other duty on deck. So he went on his way and I went down below to make the inspection.

“Q. What was the inspection that you made when you went below?

(Deposition of Thomas F. Kane.)

“A. The general routine inspection to find out or ascertain the condition of the boilers and which ones were in operation, the condition of the machinery generally, the generators, the evaporators which were in use, pumps, turning engine, lubrication of the main engine, the bilges—just a general routine inspection.

“Q. When would this have been in point of time with reference to 1835 hours, when you said that you boarded the vessel?

“A. Oh, twelve minutes. That would be—forty-seven—1847.

“Q. Around 1847? A. 1847.

“Q. You mentioned the turning engine. What did you observe as to the operation of the turning engine when you made this check?

“A. The turning engine, which should have been in operation—it is a general practice that that unit should be in operation—was not in operation. [287]

“Q. What, if anything, did you do with respect to the operation of the turning engine at that time?

“A. I put on the switch to engage the unit but not the power because I didn't know whether the turning engine was supposed to be in operation with the management of that vessel. So that was about it. I just made certain that the turning engine was not operating.

“Q. What did you do then?

“A. After I had completed my work of inspection I appeared at the chief engineer's room to pay

(Deposition of Thomas F. Kane.)

my respects and ask as to the status of the turning engine.

“Q. What directions or advice did you receive from the chief engineer at that time?

“A. I hadn’t a chance to ask the question when the second engineer, Mr. Green, appeared to inform the chief engineer that there had been a collision of a barge and the propeller as he put it.

“Q. Was there anyone else present at the time other than you and the second engineer, Green, and the chief engineer? A. That is all.

“Q. While you were in the chief engineer’s room or the vicinity, did you receive any directions or instructions regarding further operation of the turning gear?

“A. I asked if the turning engine should not be in operation, [288] and he said, ‘Yes, by all means.’ So I replied that it was not in operation. So he said, ‘Will you get it going?’ So I went back to the engine room and attempted to start the unit, but it had an electrical failure condition. So I telephoned up to the chief engineer and advised him that the unit was not in working order and asked him if he would send the electrician down to get the unit going.

“Q. Was that done?

“A. It was done. The electrician and the second engineer appeared. You see with an electrical failure on those vessels——

“Q. (Interposing): I think I had better ask you a question.

(Deposition of Thomas F. Kane.)

“Mr. Biele: Just a minute here. Let him finish his answer.

“Mr. Howard: All right.

“A. (Resuming): In the case of an electrical failure, the company requires that the electrician be employed to correct the deficiency.

“Q. What causes the electrical failure of the turning gear?

“A. The safety element had, as we normally termed it, kicked out.

“Q. What causes that element to kick out?

“A. An overload. That is what the safety element is for, to take care of any overload on the unit. [289]

“Q. How long after your conversation with the chief engineer and the second engineer, Green, in the chief engineer's room when the accident involving the barge was reported did the electrician correct this electrical condition so that the turning gear could again be operated?

“A. Five minutes.

“Q. Thereafter, Mr. Kane, did you make any observation on deck or towards the stern of the vessel with respect to the presence and functioning of the warning boards and light?

“A. Yes. It is customary to make an hourly inspection of all mechanical equipment under the jurisdiction of the night or relief engineer, and I proceeded aft at 8:00 or 2000 and found that the starboard warning sign and starboard blinker lamp were not in proper condition.

(Deposition of Thomas F. Kane.)

“Q. What did you observe as to the condition of the starboard warning sign and light?

“A. The starboard warning sign was hanging by one rope. The line that held it was parted, and it was dangling by one end of the line, and the blinker light was damaged and not in working order.

“Q. Was it or was it not in the same condition as you had observed it when you first boarded the vessel and walked aft at 1835? [290]

“A. Pardon?

“Q. Was it or was it not in the same condition as when you first boarded the vessel and walked aft to observe the starboard warning board and light at 1835?

“A. It wasn't in the same condition as I had previously seen it.

“Q. What, if anything, did you do with respect to the correction of the condition of the starboard warning board and light that you observed at 2000 hours?

“A. I again reported to the chief engineer that the unit was not in working order and asked for the assistance of the electrician to get the lamp going first, and then I suggested that he might contact the deck department and get the warning sign tied up back in place.

“Q. Thereafter during the remainder of your watch that evening did you observe whether the starboard warning board and light were repaired and put back in operation?

(Deposition of Thomas F. Kane.)

“A. On my next round at 2100 hours—that is 9:00—I observed the warning sign was in proper place and the blinker had been repaired or renewed—I didn’t know which—and was in working order.

“Q. Calling your attention to a photostatic copy of a document which has been previously identified and offered in evidence as Respondent’s Exhibit 1, are you able to state what that is? [291]

“A. Yes, I made the entries.

“Q. What is it first? A. Pardon?

“Q. What is that document? Just describe it.

“A. It is an entry in the engine room log.

“Q. Is it a page out of the engine room log?

“A. That is it.

“Q. For what date?

“A. The 10th of January, 1957.

“Q. Does your signature appear on that page?

“A. Yes, it appears twice.

“Q. And in addition to your signature, did you make any entries on that page?

“A. Yes, I did.

“Q. Can you identify those by the hour line on which the entries appear?

“A. Yes, I can.

“Q. On what hour?

“A. Well, at eight o’clock, at the end of one watch, my writing appears and my signature.

“Q. What is the nature of the writing then that appears on the eight o’clock line?

(Deposition of Thomas F. Kane.)

“A. General temperature readings, pressure readings and no remarks.

“Q. No remarks? [292]

“A. No remarks by me.

“Q. Then are there any other entries apart from your signature in your handwriting?

“A. None other than as I said—readings.

“Q. Sir? A. Just readings.

“Q. Is there an entry in your handwriting on the hour lines for nine and ten p.m.?

“A. Yes, there is.

“Q. What does that entry pertain to?

“A. The nine o'clock entry, ‘Both boilers in use. Make-up evaporator in use. Turning gear in use four hours. Red light and warning signs in place, under stern.’

“Q. And that entry was made by you?

“A. That entry was made by me.

“Q. At what time?

“A. At nine o'clock and ten o'clock.

“Q. Is there any other entry in your handwriting apart from your signature appearing on this Respondent's Exhibit No. 1?

“A. On the last watch there are recordings of temperatures and pressures on the twelve o'clock hour.

“Q. That is on the line for twelve o'clock?

“A. For twelve o'clock, yes.

“Q. Now, going back, Mr. Kane, to the time when you first [293] boarded the vessel from the dock and walked aft along the starboard side, did

(Deposition of Thomas F. Kane.)

you make any observations at that time regarding the presence of any tugs or barges in the vicinity?

“A. When I was walking forward I saw a tug with two laden barges in tow.

“Q. What was on the barges?

“A. Lumber.

“Q. You mentioned walking forward. Would this have been before or after you had made your observation with respect to the warning board and light on the starboard stern of the vessel?

“A. After.

“Q. Immediately after?

“A. Immediately after.

“Q. Now, where was this tug and the two laden barges which you mentioned?

“A. The tug and the first barge were close to the vessel, and the trailing barge or the second barge was off shore perhaps twenty feet.

“Q. When you mention the first barge, what do you mean?

“A. The barge immediately following the towboat or tug.

“Q. And where would that first barge have been at the time of this observation with respect to the starboard side of the ship? [294]

“A. Oh, in the area of No. 5 hatch. Do you know whether or not that vessel has five hatches?

“Q. I can't answer that question for you.

“A. I would say the last hatch from aft.

“Q. And in which direction was the tow then proceeding?

(Deposition of Thomas F. Kane.)

“A. Along the side forward toward the vessel’s bridge.

“Q. And how far off the starboard side of the ship was the tug at that time?

“A. Oh, perhaps four or five feet.

“Q. And how were the barges attached to the tug, if you observed that?

“A. I didn’t observe that. It was just a casual observation. I wasn’t concerned with the fastenings.

“Q. Did you observe how the forward and the trailing barge were secured to each other?

“A. No, I did not.

“Q. Did you observe whether there were any lines then extending between the tug or either of the barges and the Cotton State?

“A. I didn’t observe.

“Q. During the shift that you worked on the Cotton State on January 10th while the vessel was at Everett, did you have any occasion to check to determine how long it takes the shaft and wheel of that vessel to make one complete revolution while the turning gear is engaged? [295]

“A. Yes, I did.

“Q. When did you make such a check?

“A. Oh, perhaps nine o’clock—at 2100.

“Q. And how did you make the check?

“A. By putting a chalk mark on the stationary element immediately adjacent to the shaft and a corresponding mark on the shaft and timing the revolution of the shaft.

“Q. Until the chalk mark revolved and came

(Deposition of Thomas F. Kane.)

back up to the same point? A. That is it.

“Q. And what did you determine the time to be for the shaft to make one complete revolution?

“A. I believe it was seven minutes and some second.

“(Witness refers to document previously designated Respondent’s Exhibit 1.)

“Mr. Biele: Let the record show that Mr. Kane is referring to some document which has not been identified yet.

“The Witness: Pardon?

“Q. Can you make an estimate of the time required for one complete revolution without referring to any document?

“A. Yes, seven minutes and thirty-five seconds, I believe, was the time.

“Q. And that is an estimate that you make without referring to any document? [296]

“A. That is right.

“Q. Do all merchant vessels, steam powered merchant vessels, have a turning gear mechanism such as found on the Cotton State?

“A. All vessels of proper size do have.

“Q. Would that refer to both reciprocating engines and turbines? A. That is right.

“Q. What is the purpose of the turning gear?

“A. Oh, it serves several purposes: for general overhauling of the main engines, propeller and shafting, but it is customary and more or less essential that the turning gear be engaged when the

(Deposition of Thomas F. Kane.)

vessel's engines are secured, and the turning engine does operate the main engine. Also for the purpose of controlling temperature conditions.

“Q. On a turbine driven ship such as you have described the Cotton State to be, what is accomplished by engaging the turning gear?

“A. The lubricating oil is used throughout the engine's working parts and the turning engine does operate the engine in order to control the expansion and contraction of the engine's metals.

“Q. From your experience in the Coast Guard and in service on vessels, will you state whether or not it is a [297] customary practice to engage the turning gear upon the arrival of a vessel at a dock and ringing up Finished with Engines?

“A. After the Finished with Engines the turning gear should be engaged and the engine kept in slow operating order.

“Q. How soon after a bell Finished with Engines is received in the engine room from the bridge would the turning gear normally be engaged?

“A. Oh, from two to five minutes.

“Q. With the type of turning engine or turning gear which was installed on the Cotton State, how long would you estimate that it would take to engage the turning gear after the engineer on watch undertook to do that operation?

“A. You refer to this vessel?

“Q. This vessel.

“A. Perhaps two and one-half or three minutes.

“Q. Was the turning gear such as was installed

(Deposition of Thomas F. Kane.)

on the Cotton State of a type of installation such as you have observed on other merchant vessels?

“A. It is a conventional type of installation.

“Q. Referring now to the warning boards and the flashing lights at the stern of the Cotton State, will you state whether or not that is a type of installation which you have observed and found on other merchant vessels? [298]

“A. It is similar.

“Q. When is the turning gear on a merchant vessel normally engaged with reference to the receipt of a Finished with Engines bell?

“A. Pardon?

“Q. When is the turning gear on a merchant vessel normally engaged with reference to the receipt of a Finished with Engines bell?

“A. Immediately after.

“Q. What did you observe as to the competency of the engine room personnel and staff on the Cotton State as a result of your service on that vessel for four night shifts in January, 1957?

“A. Satisfactory.

“Q. At any time during the period of your service on the vessel was there any failure or malfunction of the personnel in the engine room?

“A. At no time.

“Q. What, if anything, did you observe as to the operation and efficiency of the machinery and equipment of the Cotton State during the period of four night shifts that you worked on the vessel in January, 1957?

(Deposition of Thomas F. Kane.)

“A. The pertinent machinery was in satisfactory operating condition.”

Mr. Crutcher: The following, your Honor, [299] is cross-examination by Mr. Gantt, who represented the respondent and cross-libelant lumber company.

(The reading was continued as follows:)

“Q. Mr. Kane, when you first observed the tug and barge alongside the Cotton State on the night of January 10, I believe you stated that you made only a casual observation, is that correct?

“A. A casual observation of the tug and barges?

“Q. Yes.

“A. A casual observation.

“Q. Do you know whether at the time you observed the tug and two barges there was anyone on board either of the two barges?

“A. I don't recall having seen anyone on either barge.

“Q. Did you see or observe in any way the collision of either of these barges with the propeller of the Cotton State? A. No, I didn't.

“Q. You did not? A. I did not.

“Q. I believe you testified that you don't recall whether there were lines from the Cotton State to the two barges.

“A. I didn't observe any lines.

“Q. Do you recall how the lines were affixed between the tug and either of the two barges or both of them? [300]

“A. I didn't observe that condition.”

(Deposition of Thomas F. Kane.)

Mr. Crutcher: The following, your Honor, is cross-examination by Mr. Biele.

(The reading was continued as follows:)

“Q. Mr. Kane, you were not in the engine room at 1845, were you? A. Yes.

“Q. Was it not your testimony that you spoke to the second assistant engineer at 1845?

“A. That is right.

“Q. When you spoke to the second assistant engineer at 1847 where were you located in the engine room?

“A. I wasn't in the engine room; I was up in the passageway outside the chief engineer's room.

“Q. Is that when you first spoke to the second assistant engineer about the condition of the engine room?

“A. No, I had previously spoken to him.

“Q. When you first went into the engine room?

“A. When I first went into the engine room he was on his way out.

“Q. And where did you meet him?

“A. At the upper level on top.

“Q. Now, how many levels above the mechanism of the turning gear was that?

“A. Two levels. [301]

“Q. Was there any distance forward or aft on the vessel from the turning mechanism from where you were?

“A. From the turning mechanism going aft?

“Q. Yes, that is the question.

(Deposition of Thomas F. Kane.)

“A. About ten feet; immediately above and ten feet aft.

“Q. Were there any other licensed engineers in the engine room at the time you went in?

“A. No one that I had seen.

“Q. You didn’t see any from the time you went in until the time you went up to the chief engineer’s office? A. I don’t get that question.

“Q. Did you see any other licensed engineer in the engine room from the time you went into the engine room until the time you went up to the chief engineer’s office?

“A. No, I saw none other than myself.

“Q. You were alone in the engine room?

“A. I was alone in the engine room on watch.

“Q. Do you know whether the fourth engineer was on the vessel?

“A. His name is there some place (indicating Respondent’s Exhibit 1 previously referred to). It is either Wyatt or Nyatt, or something like that. I never met him.

“Q. You never met the man?

“A. I never met the man.

“Q. When you spoke to the second assistant engineer did he [302] state to you anything about the condition of the machinery in the engine room?

“A. Casually. He was on his way out. He was in a hurry to do something else.

“Q. Did he state what he was in a hurry to do?

“A. I believe he said that he was going to take a fuel oil tanks sounding.

(Deposition of Thomas F. Kane.)

“Q. Did he say anything about the condition of the jacking gear? A. No.

“Mr. Howard: By ‘jacking gear’ you are referring to what we previously spoke of as the turning gear?

“Mr. Biele: That is correct.

“Q. You understand I am referring to the jacking gear as the turning gear.

“A. It is the same thing.

“Q. Did he tell you whether it was in operation or not?

“A. He didn’t say. It wasn’t discussed.”

Mr. Crutcher: Now, your Honor, at Page 32, Line 11, we now will eliminate down to——

The Court: Page 32?

Mr. Crutcher: Yes, your Honor, from Page 32 we now turn to Page 34.

The Court: Strange to say, 32 follows 33. [303] In other words, there is a displacement of Page 34. It should follow. That is all there is wrong. Now what is it you wish to eliminate?

Mr. Crutcher: We wish to commence on Page 34 at Line 10.

The Court: Line what?

Mr. Crutcher: Line 10.

The Court: I have it.

Mr. Howard: That’s agreeable.

The Court: You want to skip down to that point?

Mr. Crutcher: That is correct, your Honor.

The Court: You may do that.

(Deposition of Thomas F. Kane.)

Mr. Crutcher: Thank you.

(The reading was continued as follows:)

“Q. Mr. Kane, in your experience in the Coast Guard and Merchant Marine, have you observed the practice of checking the clearance conditions at the stern of a vessel before starting up the jacking gear? A. Yes.

“Q. Do you know whether that was done on this occasion or not?

“A. Before the jacking gear was engaged?

“Q. Yes. A. No. [304]

“Q. Such an inspection has a purpose, does it not, Mr. Kane? A. Yes, it has.

“Q. What is the purpose, if you know?

“A. The purpose is to make certain that the propeller is clear and no obstructions are present to cause damage to the propeller.”

Mr. Crutcher: Turning now, your Honor, from Page 35 to Page 36 where it is marked cross-examination resumed on Line 6.

Mr. Howard: That's agreeable.

(The reading was continued as follows:)

“Q. Mr. Kane, will you take a look at the log-book which Mr. Howard has produced and state if you recognize that book?”

The Court: Will you excuse me, Mr. Crutcher, I did not hear your last statement.

Mr. Crutcher: I beg your pardon, your Honor. We are now commencing on Page 36 at Line 6.

(Deposition of Thomas F. Kane.)

The Court: You may proceed.

Mr. Crutcher: And I'll repeat it.

(The reading was continued as follows:)

"Q. Mr. Kane, will you take a look at the log-book which Mr. Howard has produced and state if you recognize that book? [305] A. Yes, I do.

"Q. And is that the engineering log of the Cotton State? A. Yes, it is.

"Q. Do you find that you made any entries under date of January 10, 1957? A. I do.

"Q. Mr. Kane, did you make any entry on that particular page for January 10-11, 1957?

"A. Yes, I did, on two different watches.

"Q. Now, what watches did you make those entries on?

"A. The watch that began at four and ended at eight.

"Q. A.m or p.m.?

"A. P.m. on the 10th; and the watch that began at eight and was completed at midnight.

"Q. All right. Now, what entries did you make on the four to eight p.m. watch?

"A. Temperature entries only, and signed by me.

"Q. Now, the check marks are not yours?"

Mr. Crutcher: Oh, I beg your pardon, your Honor. Our own is mixed up at this point. The pages are reversed here.

The Court: Counsel ought to be careful in the future to see that everything is in order. It is

(Deposition of Thomas F. Kane.)

just a clerical mixup for which no one is responsible but for which all connected with the matter should have [306] taken a little more interest. You may proceed.

Mr. Crutcher: Commencing again at the top of Page 37.

(The reading was continued as follows:)

“Q. Specifically, what temperature entries did you make on that watch—and I am referring now to the four to eight p.m. watch?

“A. What temperature entries did I make?

“Q. Yes.

“A. The required temperatures. The numbers are in here.

“Q. Now, would you state for the record which of those temperatures you entered in the log?

“A. Well, the temperatures and also the boiler pressure.

“Q. All right. What entry of boiler pressure did you make? A. Boiler, 450 pounds.

“Q. At what time? A. 8:00 p.m.

“Q. Now, did you make any other entries?

“A. The entry showing the vacuum.

“Q. And what entry did you make regarding that? A. 25.5 inches.

“Q. Did you make any other entries?

“A. The temperature of the sea.

“Q. What was the sea temperature?

“A. 46. It looks like 46. Somebody has entered something [307] in this book.

(Deposition of Thomas F. Kane.)

“Q. Now, has there been an erasure on that book?

“A. No, not any erasure. It is just somebody who has been checking this off, apparently, with a check mark.

“Q. Now, the check marks are not yours?

“A. No, they are not. The temperature is 46. That was the prevailing sea temperature at that time.

“Q. Now, you are referring to the left-hand column under temperature readings?

“A. Yes.

“Q. From 8:00 o'clock on? A. Yes.

“Q. You say somebody put a check mark over the temperature reading that you put in there?

“A. Yes, and I believe it is in ink.

“Q. How did you make your mark? In pencil?

“A. In pencil. This is the rough log.

“Q. And when did you make your entry?

“A. At 8:00 p.m.

“Q. Now, referring to the entry immediately to the right of that, which is another temperature, the discharge temperature, at eight o'clock.

“A. That is 55 degrees.

“Q. And I note a check mark in respect to that. Did you make that check mark? [308]

“A. No, I didn't.

“Q. You just put in the 55 degrees?

“A. Yes.

“Mr. Howard: The Arabic 55?

“The Witness: Yes.

(Deposition of Thomas F. Kane.)

“Q. Now, the temperature to the right of that?

“A. That is the condensate. ‘Cond.’ is the way it appears in the logbook.

“Mr. Howard: At the top of the column?

“The Witness: Yes.

“Q. What temperature did you put in for the condensate?

“A. 85 degrees. These are all in Fahrenheit, by the way.

“Q. Now, there is a check mark below it. Did you make that? A. I did not.

“Q. Were those check marks on the last three temperatures that you stated on this log when you made the entries? A. No.

“Q. Now, continuing on across the page, Mr. Kane, did you make the temperature for DC heater?

“A. Yes.

“Q. You did make that? A. Yes.

“Q. And there is no check mark for that?

“A. None.

“Q. Now, were all these temperatures that you put in done [309] in pencil by you?

“A. No, they were not.

“Q. Some were in ink?

“A. Some in ink. This one, the DC heater temperature, appears in ink in my writing.

“Q. What were the others? I am looking at a photostatic copy, and not the original logbook. What were the others?

“A. The other boiler pressure is in ink.

“Q. What about the first three temperatures?

“A. The first four temperatures, that is, the sea,

(Deposition of Thomas F. Kane.)

the discharge, the condensate—pardon me. That first one was vacuum. You see, somebody has written across the top of this, and I have to refer to another page to find out what we are on here. The first was the vacuum and the next was the discharge and the next was the condensate—no, the vacuum, sea, discharge and condensate.

“Q. Did you make those in pen or pencil?

“A. Pencil.

“Q. In pencil.

“A. Those four were made in pencil.

“Q. Now, did you have any occasion to make any erasures when you made any of those?

“A. No. [310]

“Q. Did it appear when you wrote that that there had been previous erasures on that page when those entries were made? A. Pardon?

“Q. Did the surface of the paper appear to have been erased, or were those entries merely made in addition? A. Yes, it appears to be here.

“Q. Where do you see evidence of an erasure?

“A. Well, apparently, these recordings were made one column to the left.

“Q. Did you make them one column to the left?

“A. No, I didn't. I put them in their proper place.

“Q. What gives you the impression that they were put in one column to the left?

“A. It appears here to be an erasure.

“Q. Do you know whether any of the other assistant engineers or personnel of the ship made any erasures on that book?

(Deposition of Thomas F. Kane.)

“A. That I don’t know.

“Q. Was it ever discussed with you?

“A. It has not been discussed with me.

“Q. And these entries that appear here now were made by you, I take it, in places where they now appear?

“A. They were made where they now appear in their proper places by me.

“Q. By you? [311] A. By me.”

Mr. Crutcher: I will withdraw the question starting at Line 24 on Page 41 and go to Page——

Mr. Howard: Just a moment. I would like to check this.

The Court: You may do so.

Mr. Howard: To what page, Mr. Crutcher?

Mr. Crutcher: To Page 45, Line 15.

The Court: This is cross-examination, and the cross-examiner has a right to say whether he wishes to introduce it. The other Counsel has the right to ask that it be introduced and, if so, it will be done in connection with the other.

Mr. Howard: Line 15?

Mr. Crutcher: 15.

Mr. Howard: All right.

The Court: You may proceed, Mr. Crutcher, on Page 45, Line 15.

Mr. Crutcher: Yes, your Honor, thank you.

(The reading was continued as follows:)

“Q. Now, when you made those entries and signed the log, had the book been signed by the night security officer, M. Pilar?

(Deposition of Thomas F. Kane.)

“A. That I wouldn’t recall.

“Q. Do you recall any other watch with Mr. Pilar? [312] A. No, I don’t.

“Q. You do not know when he signed the book?

“A. No, he may have signed this book at any time he sees fit as long as it is signed before the end of the twenty-four period, which would have occurred at 12:00 noon on the eleventh.

“Q. Well, in any event, you don’t know when he signed it? A. No, I don’t.

“Q. When you went down into the engine room after first going to see the first engineer, did you see Mr. Pilar?

“A. If I did, I wouldn’t know it. I had never met the man. There were men coming in and going out of the engine room, and if Pilar had been one of those men, I wouldn’t have known it. I could have seen him but I didn’t know him. I wouldn’t recognize him.

“Q. You did meet the second assistant engineer?

“A. Oh, yes.

“Q. You recognized him?

“A. Oh, yes. You see, I had met him before. He and I were transacting business on a watch previous to that at Seattle.

“Q. Had you transacted any business with Mr. Pilar on previous watches?

“A. No, I had never met Mr. Pilar.

“Q. Now, Mr. Kane, when you went into the engine room you [313] encountered the second assistant engineer leaving the engine room, as I recall it?

(Deposition of Thomas F. Kane.)

“A. I met him as I was going into the engine room.

“Q. And he was on his way out in some sort of a hurry?

“A. No, he was in the engine room. He wasn't on the way out yet when I got there.

“Q. Now, you had some talk with him, did you?

“A. Yes, I did.

“Q. And I believe your prior testimony was that he was on his way to take a fuel oil sounding, or something, is that right?

“A. He wasn't out of the engine room yet, but he was intending to go out up on deck to take fuel oil soundings. I believe that is what he had in mind when I talked with him.

“Q. He was departing or about to depart?

“A. He was about to depart.

“Q. Now, as he left, I take it from your prior testimony, he didn't tell you the turning gear was or was not in operation? Nothing was said about it?

“A. Yes, as I recall, that wasn't discussed.

“Q. Now, this is off the subject here, Mr. Kane, but, as I understand, the turning gear is for the purpose of allowing the turbine blades to expand or contract uniformly. Is that the purpose [314] of it?

“A. That is one of the functions. It has other functions.

“Q. Well, that is the principal function?

“A. Not necessarily, no.

(Deposition of Thomas F. Kane.)

“Q. Now, you don’t have to use the jacking gear on a diesel engine when you shut it down, do you? A. Yes, that is done.

“Q. But it isn’t universally done? Some do and some do not?

“A. Some do and some do not.

“Q. It is not required by the mechanical functioning of the ship?

“A. It depends on what condition exists. If we are going to get the diesel engine under way, then we have to warm it up in advance, just like an automobile.

“Q. I am discussing the use of the turning gear or jacking gear when the ship comes into port and the plant is shut down. You don’t use the turning gear to turn the propeller over on a diesel-driven ship, do you?

“A. Yes, under certain conditions.

“Q. On all ships? A. Yes.

“Q. Do you do it on a Liberty ship or reciprocating engine ship?

“A. Not necessarily, no.

“Q. Would you do it on a ship that has a turbo-electric—one with an electric drive—that is driven by an [315] electric motor?

“A. Pardon?

“Q. Would you do it on a ship where the propeller is driven by an electric motor?

“A. Yes. You see, there are two—there is a divorced element there. The turbine is the unit to which the turning gear is attached.

(Deposition of Thomas F. Kane.)

“Q. On a turbo-electric ship?

“A. On a turbo-electric ship.

“Q. But if it is an electric motor that drives the propeller, when you engage the turning gear on a turbo-electric ship, you don't turn over the propeller, you turn over the turbine?

“A. That is it: the turbine and the generator on the turbine.

“Q. But not the propeller itself?

“A. Not the motor or the propeller.

“Q. That is one type of ship that you don't turn over the propeller after you land?

“A. After you make fast to the dock.

“Q. All right. You say after you make fast to the dock. You don't do it on a Liberty ship?

“A. No.

“Q. Now, Mr. Kane, to your knowledge, was there any means of communication between the engine room and the deck officers, and by that I mean was there a telephone [316] available to communicate with or a voice tube or bell system?

“A. Well, there is a telephone available.

“Q. If the deck officers had wished the turning gear disengaged and the propeller stopped, was there a means of rapid communication?

“A. He wouldn't say anything about or order it disengaged. He might request that the propeller be stopped from turning.

“Q. He might request that it be stopped?

“A. Yes.

(Deposition of Thomas F. Kane.)

“Q. And he had rapid means of communication, did he?

“A. Yes, there is communication all over the ship.

“Q. How would he communicate such a wish to a watch engineer such as yourself or anyone else that happened to be in the engine room?

“A. By ringing the telephone.

“Q. By calling on the phone?

“A. That is right.

“Q. Now, if he had made such a request that the turning of the propeller be stopped, how long would it take a watch engineer like yourself to accomplish that?

“A. To get to the telephone?

“Q. Well, upon receipt of an order to you to stop turning the propeller, how long thereafter would it take you to [317] accomplish or stop the turning of it?

“A. It would depend on what part of the engine room I would be in. If I was topside, perhaps it would take me half a minute. If I was down below at the log desk, which is adjacent——

“Q. How long would it take then?

“A. A quarter of a minute.

“Q. You can do it in half a minute from any place in the engine room?

“A. No, not from any place in the engine room. I would say a minute would be the maximum.

“Q. A minute would be the maximum?

“A. And you can do it in ten seconds if the

(Deposition of Thomas F. Kane.)

telephone rang, because the telephone is about eight feet from the log desk. What are you going to do? If we had an order to do something——

“Q. Just to stop the propeller—get ready to do it in the case of stopping the turning gear.

“A. I would say ten to sixty seconds.

“Q. Depending on where you happened to be?

“A. That is right.

“Q. And thereafter the propeller would be motionless? A. That is right.

“Q. Would you as an experienced officer, and having been in the Coast Guard, expect that the watch mate, seeing [318] something drift in on the propeller, would as a matter of prudence call up the engine room and tell the watch engineer to stop the propeller, that something is floating down on it?

“Mr. Howard: You are speaking of an engine room officer such as Mr. Kane?

“Mr. Biele: That is right.

“A. Well, this other chap of whom you speak would be who?

“Q. Well, one of the deck officers, or the watch officer on deck, sighting something adrift, something drifting in under the propeller or under the counter when the propeller is turning——

“Mr. Howard: You are asking this witness' opinion on that as an engineering officer?

“Mr. Biele: That is right.

“Q. Would you expect to be notified to shut off the propeller?

“A. Normally, no, because the propeller is oper-

(Deposition of Thomas F. Kane.)

ating with the turning engine, and we expect to continue to have it operating. But in the case of an emergency the deck officer might or could call up and ask to have it stopped.

“Q. If such an emergency were something imperiling the propeller or fouling the propeller, would that be a sufficient emergency?

“A. It depends on the object that was going to foul the [319] propeller.

“Q. Well, something of large size and dimension and weight that would damage the propeller members?

“A. It could be expected that the man might call up and ask to have the propeller stopped.”

The Court: I believe I will have to interrupt you here. Will it be convenient to Counsel to resume at 1:30?

Mr. Crutcher: Yes, your Honor.

Mr. Howard: That is agreeable, your Honor.

The Court: For those connected with this case the matter is continued until 1:30 and they may now be excused until that time.

(At 12:00 o'clock noon, a recess was taken until 1:30 o'clock p.m.)

November 28, 1958—2:15 p.m.

(All parties present as before.)

The Court: You may proceed in the case on trial. You may resume the reading of the deposition.

(Deposition of Thomas F. Kane.)

Mr. Howard: Your Honor, I have a supplemental [320] memorandum to submit, of which I have provided counsel a copy, on one of the questions your Honor asked us to look for additional authorities on.

The Court: When it is filed, Mr. Clerk, may I see it.

The Clerk: Yes, your Honor.

The Court: You may proceed with the reading of the deposition. I think we were on page 53, were we not?

Mr. Howard: Yes, your Honor.

Mr. Crutcher: Yes, your Honor, page 53, on line 3. This continues the cross-examination by Mr. Biele.

(The reading was continued as follows:)

“Q. And if such an action were taken, it is quite possible the damage to the propeller could be minimized or perhaps eliminated entirely?

“A. If the obstacle of which you speak drifted in and he did see that and did telephone or communicate and ask to have the propeller stopped, it could be minimized.

“Q. Mr. Kane, you have no idea, or do you know exactly when the propeller turning gear on the Cotton State was disengaged?

“A. Approximately, I would say——

“Q. Well, now, let me ask this: You didn't see it kick out, [321] did you?

“A. No, I didn't.

(Deposition of Thomas F. Kane.)

“Q. It was kicked out when you first saw it?

“A. That is right.

“Q. Have you any idea how long before that was kicked out, or are you just estimating from logbook entries or other means?

“A. I don’t know when the unit became disengaged.

“Q. And you have no knowledge when it was engaged except through——

“A. ——the entry in the logbook.”

Mr. Crutcher: And then, Your Honor, continuing on with page 54 at line 18.

“Q. Mr. Kane, have you gone over your previous testimony after it was typed up?

“A. Pardon?

“Q. Have you seen your previous testimony after it was typed up by Mr. Royse?

“A. No, I haven’t.

“Q. You haven’t read over what you previously testified? A. No.

“Q. When you went to the Chief Engineer’s room, Mr. Kane, and then returned to the engine room the second time—I am referring to now——

“A. (Interposing): I wonder if we can get that straight? [322] When I came aboard the ship at 1835 I went to the Chief Engineer’s room, but he wasn’t——

“Q. He wasn’t in his room?

“A. He wasn’t in his room or in that proximity. Then I went aft——

“Q. We got that.

(Deposition of Thomas F. Kane.)

“A. I know. That was three minutes. Then I came back again midships, and the Chief Engineer was there. That was the second visit I made to his room.

“Q. Then you went to the engine room?

“A. That is right.

“Q. And then went back again a third time to the Chief Engineer’s room?

“A. That is right.

“Q. And following the third visit to the Chief Engineer’s room you went below again to the engine room? A. Yes.

“Q. Now, when you went below, you attempted to start up the turning gear, is that correct?

“A. Yes.

“Q. When you made that attempt, did you determine whether the turning gear was clear of obstacles or obstructions?

“A. Well, we had that information. I was familiar with the condition existing, and that was that the barges were—or a barge had drifted in under the propeller. [323]

“Q. Now, my question was: Did you know whether the barges had been cleared from the propeller? A. No, I didn’t.

“Q. You started without determining whether they were there or not?

“A. Just a minute. The Chief Engineer was on deck, and he said, ‘Watch, wait until I see what is going on.’ And then he said to the Second Engineer, ‘Get the electrician and go down below.’ That is

(Deposition of Thomas F. Kane.)

his exact words. 'And when I give you the high sign, engage the turning engine.'

"Q. Hadn't you tried the turning engine and found it required an electrician?

"A. No, I didn't try the turning engine, but I tried the motor that would operate it or the electric current.

"Q. That is what I referred to.

"A. The electric current?

"Q. Yes.

"A. But the electric current there and throwing in the switch and using the rheostat doesn't start the unit. Throwing in the electric switch doesn't start the unit.

"Q. Is that what you tried after this third visit?

"A. No, I put in the electric switch. I tested the electric switch to see if there was any electricity there.

"Q. Was there electricity?

"A. No, apparently, on the line some place a fuse had kicked [324] out.

"Q. And this was following your visit on the third occasion to the Chief Engineer's quarters?

"A. That is right."

Mr. Crutcher: Now, your Honor, going on to page 59 with Mr. Howard's redirect—I beg your pardon. This is Mr. Howard's. Do you wish me to begin at the beginning?

Mr. Howard: I think you could start at line 3 on page 58, Mr. Crutcher.

(Deposition of Thomas F. Kane.)

(The reading was continued as follows:)

“Q. Are you familiar with how a night security engineer functions on States Marine Line vessels?

“A. Yes; it is customary for them to have a night security engineer aboard the vessel at no specified place for the purpose of consultation.

“Q. Who serves as a night security engineer?

“A. A licensed engineer appointed by the Chief Engineer.

“Q. One of the regular ship's engineers?

“A. Yes.

“Q. And how does the duty or responsibility of a night security engineer compare or contrast with that of a relief or night engineer such as you were serving as?

“A. His status is inactive. The night relief engineer's status is active. [325]

“Q. That is in the capacity that you were serving? A. That is right.

“Q. Compare that with a night security engineer?

“A. A night security engineer may remain in his room, and quite often in his berth or elsewhere, not necessarily in the engine room. He goes there for the purpose of consultation. That is a company requirement.

“Q. Is it customary on those vessels operated by States Marine Lines for the night security engineer to be present in the engine room during the night watch?

(Deposition of Thomas F. Kane.)

“A. According to the Cotton State, and that is the only vessel of that company with which I have been associated——

“Q. I don’t believe you understood the question. Is it customary for a night security engineer to be present in the engine room?

“Mr. Biele: You are referring to the Cotton State or the States Marine Line vessels generally?

“Mr. Howard: From this witness’ experience with the vessels of the States Marine Line.

“A. It is not necessary for a night security engineer to be in the engine room at any time during his watch.

“Q. Now, Mr. Kane, Mr. Biele asked you to give your opinion based on your years of experience in the Coast Guard and otherwise, as to what you might expect in the way of a request or an order from the watch officer on deck [326] with respect to some object that might be approaching or endangering the propeller.

“I want to ask you to assume that a barge in tow of a tug was coming alongside of a vessel moored at a dock at a time such as you found conditions to be aboard the Cotton State on the evening of January 10th, when you came aboard the vessel, with a propeller warning board and flashing red lights hanging from the stern of the vessel and the elements burning.

“Would you expect, under those circumstances, that a deck officer or watch officer on deck would

(Deposition of Thomas F. Kane.)

find it necessary to call the engine room and request that the turning gear be disengaged to stop the turning of the propeller?

“Mr. Biele: I will object to that because it does not have all the elements and facts that the States Marine Company is relying on in this case, and it has facts at the time of Mr. Kane’s observation on deck that are entirely different than those testified to by the Chief Officer of the Cotton State.”

The Court: The objection is overruled. Read the answer on line 21.

(The reading was continued as follows:)

“A. I would consider the warning signs and the flashing red lights sufficient to keep oncoming traffic away [327] from the propeller. That is the purpose of having the warning signs and the flashing lights installed in that area.

“Q. Would you then expect as an engineering officer and based on your experience in the Coast Guard and the Merchant Marine that a watch officer on deck would find it necessary to call by phone to the engine room to request that the turning gear be disengaged so as to stop the turning propeller?

“A. It could be possible, but not probable. We don’t ordinarily look for anything like that. There are times, of course—this is not relating to this case—there are times when a man may call down if he sees fit. For instance, if he is singling up the

(Deposition of Thomas F. Kane.)

lines of the ship, if one of the lines drops over the stern and the propeller is in action or motion, he would call down from the telephone, which would be on the poop, or the steering gear area, where these lines would be—he would call down and request that the propeller be stopped, that they were singling in the line, and he didn't want to foul up his line in the propeller.

“Q. Assuming there was no question as far as mooring lines or hawsers at the stern and that you had the situation of a small cable from a tug with barges in tow, such as you observed on the deck of the Cotton State before you [328] went below to the engine room and went up to the Chief Engineer's room and below, would you then expect the watch officer on deck to call and request the turning gear be disengaged?

“A. I would not expect that order.

“Q. Did you receive any such order?

“A. I didn't receive any such order.

“Mr. Howard: That is all.

“Recross-Examination

“By Mr. Biele:

“Q. When you observed the tug and barge in the position which you were just asked about in the last question, I gather that they were not in any danger of fouling or drifting down on the propeller, were they, as you observed them?

“A. Oh, I think I stated that the tug and the first barge were in the midship area.

(Deposition of Thomas F. Kane.)

“Q. And I believe you testified the second barge was——

“A. The trailing barge, I call it——

“Q. The trailing barge?

“A. The trailing barge was breasted off the vessel. That means it was away from the vessel.

“Q. It was away from the vessel's side at that time?

“A. Yes, about twenty-five to thirty feet. [329]

“Q. And when you gave your answer to Mr. Howard's last series of questions, was that the situation that you had in mind when you said you wouldn't expect an order to the engine room to stop the turning propeller?

“A. That would govern my thinking because of the fact that that barge was off of the vessel, breasted away from the vessel, and I wouldn't expect that barge to be under the propeller or under the counter.

“Q. Now, if you saw a tug pushing a barge directly onto the propeller, aiming right towards the propeller, would you expect the deck officer to call down and say to stop the engines?

“A. By all means.”

Mr. Howard: I offer that deposition in evidence, your Honor.

The Court: It is admitted as part of the libellant's case in chief with like effect as if the witness were here present personally and sworn and orally testifying from the witness stand. Call the next witness.

Mr. Howard: I would next like to read the deposition of Second Assistant Engineer Green.

The Court: You may do that. You may proceed.

(Thereupon, the deposition of J. J. Green was read as follows:) [330]

DEPOSITION OF J. J. GREEN

“Q. Mr. Green, you have been sworn by the court reporter? A. Yes.

“Q. Where do you live, sir?

“A. 1415 Sixth Street Northeast, Bellevue, Washington.

“Q. What licenses do you have in the——”

The Court: Pardon me just a moment. In what city, town or country was this deposition taken?

Mr. Howard: Vancouver, Washington, your Honor.

The Court: You may proceed.

(The reading was continued as follows:)

“Q. What licenses do you have in the United States Coast Guard?

“A. Second Assistant Engineer, Steam; Third Assistant, Diesel.

“Q. How long have you had that license?

“A. Second Assistant, it has been approximately six years.

“Q. How long have you been employed by the States Marine Company?

“A. Since 1 August, 1950.

“Q. How long have you been aboard the SS Cotton State?

(Deposition of J. J. Green.)

“Q. The exact date I can’t say. It was in November of ’55.

“Q. What was your employment on the night of January 10th, 1957?

“A. I would have to check the records for the date.

“Mr. Howard: May he use the log, the [331] engine log? Or have you got the bell book handy there?

“Mr. Biele: I believe I had the wrong date. The date is the 12th, isn’t it?

“A. No, it is the 10th.

“Q. What was your billet on the ship?

“A. Second Assistant Engineer.

“Q. What kind of ship is the Cotton State?

“A. C-2.

“Q. What kind of propulsion equipment does she have? A. Steam turbine.

“Q. How much horsepower does that turbine develop? A. 6,000.

“Q. What kind of a propeller does she have?

“A. Three-bladed propeller.

“Q. What diameter does the propeller have?

“Mr. Howard: If you recall.

“A. I couldn’t state the exact diameter.

“Q. (By Mr. Biele): Could you state the pitch of the propeller? A. No.

“Q. When the vessel goes ahead, when the propeller goes ahead, does the wheel move from right to left or in a clockwise direction or a counterclockwise direction?

(Deposition of J. J. Green.)

“A. Looking from ahead or astern?

“Q. When the propeller is going ahead. [332]

“A. Yes, but where are you? Where am I? Am I looking back at it or am I looking forward at it?

“Q. Looking at it from aft.

“A. From aft?

“Q. Yes.

“A. It would be in a clockwise direction.

“Q. Is that what is considered to be a right-handed wheel? A. Yes.

“Q. Is the Cotton State equipped with jacking gear? A. With a turning gear.

“Q. What does that consist of?

“A. Actually, it is essentially the same as a jacking gear, but it consists of an electric motor which is engaged on a pinion shaft to turn the main engine while cooling down or prior to warming up.

“Q. How much horsepower does that electric motor have? A. Offhand I couldn't say.

“Q. Do you know how many revolutions per minute that motor turns——

“A. I have never checked it. According to the specifications, I believe it is approximately seven or eight.

“Q. Are you talking about the propeller?

“A. Seven or eight minutes for one revolution.

“Q. That is, the jacking or turning gear turns the propeller——” [333]

The Court: Incidentally, do Counsel agree that that is a long time, seven or eight minutes for one

(Deposition of J. J. Green.)

revolution of a propeller? Seven or eight minutes is a long time. Think how far you can go up and down these hills in ten minutes.

Mr. Howard: Your Honor, the propeller turns very slowly.

The Court: It surely must.

Mr. Howard: In the jacking gear.

The Court: You may proceed.

(The reading was continued as follows:)

"Q. Are you talking about the propeller?

"A. Seven or eight minutes for one revolution.

"Q. That is, the jacking or turning gear turns the propeller once every seven or eight minutes?

"A. That's right, approximately.

"Q. Where are the controls for the turning gear?

"A. There is one switch on the main switch-board, and there is a separate switch down below on the lower plate aft.

"Q. What has to be done to engage or disengage the operation of the turning gear?

"A. Well, to engage it you have to wind off the bolted locking device that locks the coupling on the turning gear away from the coupling on your pinion shaft. That has to be taken out and reversed. Then you have a hand [334] wheel that screws your coupling on the turning gear motor shaft into the coupling on the turbine pinion shaft, and it locks in place.

(Deposition of J. J. Green.)

“Q. How long in time would it take to engage the turning gear to the main motor?

“A. I would say approximately not more than two minutes.

“Q. How long would it take to disengage it?

“A. About 45 seconds.

“Q. How long does it take to start the electric motor that activates this mechanism?

“A. Myself, it takes not more than 45 seconds.

“Q. Does it require the pressing of a switch or——

“A. Yes, you have two switches. You have got to go from the top plate—not the top plate, but from the upper plate to the lower plate.

“Q. How long does it take to discontinue the electrical motor?

“A. That is pretty hard to say.

“Q. How long would it take to stop the rotation of the wheel? A. Just to throw the switch.

“Q. Does the motor thereafter cut out?

“A. Just a second.

“Q. Is there any means of communication between the engine room and the after deck on the Cotton State?

“A. I couldn't say for sure. I believe there is a telephone [335] back there, but I am not sure.

“Q. Have you ever used it? A. No.

“Q. Is there a speaking tube? A. No.

“Q. On the night of January 10th I take it you didn't have any communication by telephone with anyone on deck aft on the Cotton State?

(Deposition of J. J. Green.)

“A. No.

“Q. Did you have any conversation or discussion with anyone on deck about the arrival of certain scows alongside the vessel on that night?”

Mr. Howard: Do you want to go to the next question, Counsel?

(The reading was continued as follows:)

“Q. What time did the vessel arrive in Everett, Mr. Green?

“Mr. Howard: You can refer to the logbook on that, Mr. Green.

“A. You want the time when they were finished with the engines and all?

“Q. (By Mr. Biele): What time was the vessel finished with the engines?

“A. Finished with engines was at 1835.

“Q. What does that signify, that you were finished with the engines? [336]

“A. It means as far as I am concerned, or in the engine room as far as we are concerned, that the bridge is going to do no more maneuvering or backing, no more use for the main engines so we can secure them.

“Q. Now, when you say ‘we,’ were you on watch in the engine room?

“A. I wasn’t on watch. I was standing by with the man on watch.

“Q. Do you recall what the oiler and fireman were doing? A. Specifically I couldn’t say.

“Q. When you engaged the turning gear at this

(Deposition of J. J. Green.)

time did you inform any of the deck officers that you were engaging the turning gear? A. No.

“Q. Before the turning gear was started had you determined whether there were any barges or scows or vessels in the vicinity of the propeller?

“A. No.

“Q. Had you determined whether there was a watch maintained on the stern to see if everything was clear in the vicinity of the propeller?

“A. No.

“Q. You say ‘No’? A. No.

“Q. Did the turning gear immediately become effective? [337] A. Yes.

“Q. Did you determine before you started the turning gear whether any warning signs had been placed over the counter of the vessel?

“A. Yes.

“Q. After starting the turning gear did you remain in the engine room?

“A. For a short period of time.

“Q. How long did you remain in the engine room? A. That is impossible to say.

“Q. What were you engaged in doing?

“A. Starting the auxiliary feed pump.

“Q. Was anyone left to shut off the turning gear in the event of a sudden emergency?

“A. Not specifically for that. There were men in the engine room on watch.

“Q. Were you in the engine room when any indication of trouble occurred? A. No.

(Deposition of J. J. Green.)

“Q. Did you leave the engine room before the propeller was jammed or hung up?

“A. Will you repeat that one?

“(Last question read.)

“A. No—wait a minute. Yes, I did. I did, yes.

“Q. Where did you proceed after leaving the engine room? [338]

“A. I came up on deck Whether to my room or out on deck, I couldn't say.

“Q. You know that the propeller was jammed or struck sometime during the night of the 10th, do you not? A. Yes.

“Q. Did you observe anything in the way of the propeller or counter of the vessel? A. Yes.

“Q. What time did you make this observation you refer to? A. I couldn't state any time.

“Q. What did you observe?

“A. I observed that the propeller warning sign was hanging and that the warning light wire was torn from the beam.

“Q. Did you observe any scows or tugboats in the vicinity of the propeller? A. No.

“Q. When you left the engine room was there an engineer on watch? A. There was.

“Q. Who was that?

“A. Mr. Pilar was security watch.

“Q. The Fourth Assistant? A. Yes.

“Q. Did you leave any instructions with him as to the [339] performance of his duties?

“A. No instructions were necessary.

(Deposition of J. J. Green.)

“Q. Did you inform him that the jacking gear was engaged or the turning gear was engaged?

“A. I didn’t inform him. He saw me put it in.

“Q. I didn’t get the last part of that.

“A. I didn’t verbally inform him.

“Q. Did you make any entries in the engineer’s log the night of the 10th? A. Yes, I did.

“Q. Is that the engineer’s log that you have in your lap now? A. Yes.

“Q. What is Exhibit No. 6?

“A. What is Exhibit No. 6?

“Q. Yes.

“A. According to the notation, Exhibit No. 6 is the Engineer’s Logbook dated January 10th and 11th, 1957.

“Q. Is that record kept in the regular course of business of the ship? A. Yes.

“Q. Have you made entries in that book?

“A. Yes.

“Q. On that day? A. Yes. [340]

“Q. Did you make an entry as to the time you started the turning gear?

“A. Yes. The turning gear was engaged.

“Q. What time was that? A. At 1840.

“Q. Did you make any other entries on that date? A. Yes.

“Q. Will you tell us which ones you made?

“A. There are quite a few of them.

“Mr. Howard: Is it agreeable that he read all the entries that he made around that time?

“Mr. Biele: We can start from 1835.

(Deposition of J. J. Green.)

“Mr. Howard: 1835, the entries you made in the rough engine log.

“A. 1835. ‘Finished with engines at 1835. Counter, 37299820. Meter, 6781180. Port settler 10 feet 11 inches; starboard settler, 4 feet 4 inches. Secured steam to main engine and engaged turning gear at 1840. Both generators on the line, Port and Starboard boiler donkey. Guard and red light under stern.’

“Q. Are there any other entries subsequent to that made by yourself?

“A. Nothing prior to 1835—yes, there is prior to 1835.”

The Court: Will you wait just a minute. In everyday landlubber’s language what time is [341] 1835? Subtract 12 from 1800?

Mr. Howard: It would be 6:35 p.m., your Honor.

The Court: You may proceed.

(The reading was continued as follows:)

“Q. Are there any other entries subsequent to that made by yourself?

“A. Nothing prior to 1835—yes, there is prior to 1835.

“Q. We can eliminate those.

“A. But nothing the rest of the night or the next morning.

“Q. Mr. Green, when was your log written?

“A. My log was written prior to leaving the engine room.

(Deposition of J. J. Green.)

“Q. About what time was it that you left the engine room?

“A. I couldn’t state any definite time. It would be only approximately.

“Q. Were you aware when you left the engine room that the propeller had been struck or damaged? A. No.

“Q. When were you first aware of it? When was this first called to your attention?

“A. That the propeller was damaged?

“Q. Yes.

“A. It was after the inspection made by the Chief Engineer.

“Q. That it was struck?

“A. That it was struck. I had an indication that it may [342] have been struck when the jacking gear was kicked off the line due to the overload.

“Q. When you say the jacking gear, you mean the turning gear?

“A. The turning gear. I use them synonymously.

“Q. Were you in the engine room when it was kicked off the line? A. No.

“Q. Where were you when it was kicked off the line? A. I couldn’t say.

“Q. Do you recall how this came to your attention? A. Which?

“Q. That the turning gear was kicked off the line. A. I couldn’t say.

“Q. What do you mean by the expression ‘the turning gear was kicked off the line’?

(Deposition of J. J. Green.)

“A. The circuit was broken electrically. The electrical circuit was broken automatically.

“Q. Because of an overload or an unusual condition?

“A. Due to the overload. The overload protection in the device was operative or actuated.

“Q. You were not in the engine room when that occurred? A. No.

“Q. When you started up the turning gear, did you notify anyone on deck that you were doing this? A. No. [343]

“Q. Is there such a custom on the States Marine ships?

“Mr. Howard: What custom are you referring to?

“Mr. Biele: To notify the deck officers that the turning gear is started.

“Mr. Howard: Do you understand the question?

“A. Yes; I do.

“Mr. Howard: All right.

“A. No; it is not a custom to notify the deck.

“Q. (By Mr. Biele): Is it your statement that it is never done?

“A. Myself, it is never done.

“Q. Do you know what other engineers do?

“A. No. I know of no other engineer that does.

“Q. Did you observe the propeller of the Cotton State before you proceeded to Everett?

“A. No.

(Deposition of J. J. Green.)

“Q. Were you on watch during the passage from Seattle to Everett?

“A. I was not on watch.

“Q. Were you in the engine room?

“A. Yes.

“Q. During that passage did the propeller give any indications of vibration? A. No.

“Q. Did it give any indication of having struck something? [344] A. No.

“Q. Were you in the engine room during the whole trip from Seattle to Everett?

“A. I believe so.

“Q. Were you in the engine room when the vessel was preparing to get under way from Seattle? A. Yes.

“Q. Did any indication of striking occur then?

“A. No.

“Q. Would you state what Exhibit 8 is? Do you recognize it?

“A. Exhibit 8 is the Engineer's Bell Book.

“Q. Have you made entries in that bell book?

“A. I have.

“Q. Did you make any for the 10th of January?

“A. No.

“Q. Was there a night engineer aboard the Cotton State?

“Mr. Howard: When are you referring to, Counsel?

“Mr. Biele: On the evening of January 10th.

“Mr. Howard: At what time?

“Mr. Biele: At the time of docking.

(Deposition of J. J. Green.)

“The Witness: At the time of docking?

“Mr. Howard: Yes.

“A. No.

“Q. Do you know if a night engineer subsequently came aboard [345] the vessel?

“A. A night engineer came aboard.

“Mr. Howard: After docking?

“A. Yes.

“Q. (By Mr. Biele): Do you know when he came aboard?

“A. The time I couldn't specify.

“Q. Was he aboard when you started up the turning gear?

“Mr. Howard: Now, Counsel, do you mean when you say ‘aboard,’ was he in the engine room or in the same area where this witness was?

“Mr. Biele: My question was if he was aboard when he started up the turning gear?

“A. I couldn't say.

“Q. By that, you mean that he was not in the engine room or near where you were engaged?

“A. I didn't see him.

“Q. Do you recall the identity of the night engineer? A. I believe I can.

“Q. Who was he?

“A. By name I couldn't.

“Mr. Howard: By that you mean you could recognize him if you saw him?

“A. Yes.

“Q. (By Mr. Biele): Had he been aboard the vessel before? A. Yes. [346]

(Deposition of J. J. Green.)

“Q. At Everett or Seattle? A. Yes.

“Q. Do you know when he assumed his watch, if any, in the engine room?

“A. The time I couldn’t say.

“Q. Sir?

“A. I say, the time I couldn’t say, the specific time.

“Mr. Biele: I believe that is all I have.

“Mr. Gantt: I have no questions.

“Cross-Examination

“By Mr. Howard:

“Q. Have you served aboard other steam-turbine-driven ships than the Cotton State?

“A. Yes.

“Q. As an engineer? A. Yes.

“Q. A licensed engineer? A. Yes, sir.

“Q. Were those all operated by States Marine Lines, or have you served aboard turbine-driven ships operated by other companies?

“A. By other companies.

“Q. Can you name the other companies where you have been a licensed engineer on steam-turbine-driven ships? [347]

“A. No other companies as licensed engineer.

“Q. As an unlicensed man? A. No.

“Q. In what capacities?

“A. As engine caddie.

“Q. As engineer? A. Engine caddie.

“Q. What other companies?

(Deposition of J. J. Green.)

“A. American President Line and United States Line.

“Q. What type of ships were those?

“A. Victory ships, C-3.

“Q. American President and U. S. Lines?

“A. Yes.

“Q. Are those ships equipped with either jacking gear or turning gear? A. Yes, sir.

“Q. The same type of jacking gear on those ships?

“A. It accomplishes the same purpose, yes.

“Q. Will you state, if you recall, whether the American President Line ships and the U. S. Line ships had the same type of propeller warning boards for use on the stern or the counter?

“A. The same type? No.

“Q. A similar type? A. No. [348]

“Q. What, if any, warning was provided on those ships?

“A. They had a sign attached to the handrail.

“Q. Attached to the handrail?

“A. Along the counter of the stern.

“Q. Was that a removable sign or a fixed sign? By that I mean did it remain there all the time?

“A. I believe it did.

“Q. Have you seen other ships in which propeller warnings were painted on the stern or counter of the ship? A. I haven't noticed.

“Q. I believe you stated that it would take you about 45 seconds to disengage the jacking gear in the engine room.

(Deposition of J. J. Green.)

“A. Approximately that.

“Q. That is assuming your position is where?

“A. Assuming my position is—so that I am in a position to do it.

“Q. In any particular location in the engine room?

“A. At the switch for the turning gear.

“Q. What operations would consume this 45 seconds that you have estimated would be required to disengage it? What would you be doing during that 45 seconds?

“A. I would have to turn off the switch for the power on the motor. Then I would have to go over to the hand wheel on the turning gear, disengage the locking pin and screw out the coupling on the pinion. [349]

“Q. Does that complete it?

“A. That completes it.

“Q. In other words, what you refer to as disengaging the jacking gear on the turbine might be described as screwing it out of position?

“A. No; it is not ever screwed out of position.

“Q. It is not? A. No.

“Q. Would you make any distinction between what you have described as disengaging the jacking gear and simply stopping the operation of the jacking gear? A. Repeat that, please.

“Q. Is there any distinction between what you have described as disengaging the jacking gear and another operation which might be referred to as stopping the operation of the jacking gear?

(Deposition of J. J. Green.)

“A. Yes.

“Q. What would be the distinction?

“A. Stopping the jacking gear or turning gear, all you have to do is throw a switch.

“Q. How long does that take?

“A. If a fellow is at the switch, a fraction of a second.

“Q. Any longer period of time would depend upon your location at the time you determined that it should be stopped; is that correct? [350]

“A. Yes.

“Q. What difference is there between disengaging the jacking gear which you have described and screwing the jacking gear out of operation?

“A. The only difference is that there is this wing nut bolted locking device that insures that the turning gear cannot be coupled to the coupling on the pinion shaft.

“Q. Which would be an additional operation to be performed when you no longer intended to use the jacking gear for a period of time?

“A. That is right.

“Q. In order to stop the propeller or wheel from turning, would it be necessary to disengage the jacking gear? A. No.

“Q. What would be necessary?

“A. To throw the switch and cut the power off the motor.

“Q. In the manner you have just described?

“A. To throw any switch.

“Q. I am not sure that it clearly appears what

(Deposition of J. J. Green.)

the purpose of the jacking gear is. Would you go through that again? Just what does it accomplish?

“A. When the engine is in use it is hot, very hot. When you stop turning the engine over with the steam it cools down, and then in order to prevent a warping of the [351] rotor it has to be turned over so it cools down evenly throughout the surface area.

“Q. On what types of ships is it necessary to do that? A. All types of ships.

“Q. On what type propulsion is it necessary?

“A. On all types of propulsion except Diesel.

“Q. Except Diesel? A. Yes.

“Q. How long is the jacking gear usually operated? A. On this ship four hours.

“Q. On this ship. Is that true of other C-2's steam turbines that you are familiar with?

“A. No.

“Q. What? A. No.

“Q. How long would they do it on other ships?

“A. The length of time would vary with the specification of the Chief Engineer.

“Q. I take it, then, that the time the jacking gear is in operation on those ships is determined by the Chief Engineer's instructions to the watch engineer? A. That is right.

“Q. Or to the Assistant Engineer?

“A. Yes.

“Q. As a general rule, would you say that the jacking gear [352] on steam-turbine-driven ships is kept in operation for several hours after they are

(Deposition of J. J. Green.)

finished with the engines? A. Yes.

“Q. Does that always involve the turning of the propeller or wheel? A. Yes.

“Q. Can you state whether or not it is customary on the Cotton State to await any instructions from the Chief Engineer or other source before starting the turning gear? A. No.

“Q. What determines when you start the turning gear in operation?

“A. Well, upon securing the steam on the main engine.

“Q. That is done when?

“A. When the bridge is no longer in need of the engines or has finished-with-the-engine bell.

“Q. When they have a finished-with-the-engine bell? A. Yes.

“Q. Will you describe the propeller warning board that you have referred to, what it is made of and what size it is, approximately?

“A. I believe it is a piece of 1 by 6 lumber approximately 10 feet long.

“Q. What color?

“A. Red and white striped. [353]

“Q. Printing or lettering?

“A. I don't recall. It is supported at either end by line which is secured to the handrail on the stern of the ship.

“Q. The illumination?

“A. Illumination is by flashing red light.

“Q. Located where?

“A. On each end of the board.

(Deposition of J. J. Green.)

“Q. What is the source of power, if you know?

“A. A marine plug in the jackstaff area.

“Q. In the stern area of the ship?

“A. Yes.

“Q. I believe you testified in answer to a question by Mr. Biele that you had determined that warning signs had been placed at the stern?

“A. Yes.

“Q. Will you describe how you determined that?

“A. My determination is from the Chief Mate.

“Q. How did you receive that advice on the night of January 10th?

“A. I didn't receive actual verbal affirmation that they were in place. It was my personal understanding with him and I had assumed after tying up that they are placed in position.

“Q. Does the engineer on duty or on watch and the unlicensed [354] personnel in the engine room have the responsibility in connection with placing in operation the propeller warning boards?

“A. No.

“Q. You mentioned that a Mr. Pilar was actually on watch in the engine room upon your arrival at Everett on January 10th about 1835 hours. Did you actually secure the main plant and engage the turning gear yourself?

“A. I secured the steam, the main steam stops on the boiler, and started the turning gear.

“Q. You mentioned in answer to a question by Mr. Biele that in your experience you knew of no other engineer that undertook to notify the deck

(Deposition of J. J. Green.)

or the officer on watch on deck when the turning gear was engaged. Are you referring to the States Marine Line vessels, or are you referring to merchant vessels generally?

“A. Merchant vessels—strike the answer to that question, merchant vessels. That question could be ambiguous.

“Q. I am referring to U. S. merchant vessels.

“A. I don't mean ambiguous in that situation. The turning gear is engaged under different types of operation. It is engaged to start warming up and it is engaged to start cooling down.

“Q. I am referring now to a time when you receive a finished-with-engines bell. Now applying my question to that—— [355]

“A. I know of no other engineer.

“Q. On any merchant vessel?

“A. On any merchant vessel.

“Mr. Howard: I think that is all I have.

“Redirect Examination

“By Mr. Biele:

“Q. Mr. Green, was any damage sustained by the turning gear?

“A. None that has shown up yet.

“Q. When you engaged the turning gear did you leave the propeller in an ahead rotation or an astern rotation? A. I couldn't say.

“Q. You mentioned two switches to the turning gear, one being to the gear itself. Is there a second

(Deposition of J. J. Green.)

one on the operating platform, a switch on the main panel board? A. Yes.

“Q. Where is that second switch?

“A. It is on the main panel board on the star-board side of the engine.

“Q. Where is that with relation to the throttle or control?

“A. The throttle is inboard and forward.

“Q. Is it on the same platform?

“A. Yes.

“Q. How far away is the panel board from the switch on the throttle? [356]

“A. Approximately 15 feet, 15 to 20 feet.

“Q. Are there any warning lights or buzzers or alarm system of any sort on the turning gear to indicate an overload? A. No.

“Q. The only reaction would be the tripping out of the circuit breakers? A. Yes.

“Q. Do they have this type of equipment on reciprocating engines? A. No.

“Q. Do they have it on Liberty ships?

“A. No.

“Q. Are there any written orders aboard this vessel relating to the engaging or disengaging the operation of the jacking gear?

“A. Only that it has to be logged.

“Q. Only what?

“A. That it has to be logged, and upon warming up permission must be received from the bridge to start turning over.

“Q. Where are those orders contained?

(Deposition of J. J. Green.)

“A. I believe the Chief Engineer has company letters.

“Q. Does the Chief Engineer ever issue a set of instructions relating to the operation of the turning gear on the main engine?

“A. Only to the necessity of logging the operation and [357] receiving permission from the bridge upon warming up.”

The Court: “Upon warming up,” is that a mis-speaking by the witness? He is talking about warming up the vessel, is he not?

Mr. Howard: Warming up the engine.

The Court: Does that mean after warming up or before warming up or with reference to the subject of warming up? Do Counsel understand the term “upon warming up”? The Court does not.

Mr. Howard: I understand that, your Honor, to mean that he only has to receive permission from the bridge to start the turning gear upon a warming up operation, not on a cooling off operation.

The Court: You may proceed.

Mr. Biele: No, your Honor, that's not quite my understanding of it. They have to receive some assurance from the watch mate or from somebody on deck that things are clear before they start up the jacking gear.

The Court: My misunderstanding is made more acute due to the disagreement of Counsel. You may proceed. Proceed with the reading of the deposition.

(Deposition of J. J. Green.)

(The reading of the deposition was continued as follows:)

“Q. In response to Mr. Howard’s question you indicated that you assumed the warning boards were up when you started [358] the jacking gear?

“A. Yes.

“Q. But you don’t know of your own knowledge? A. I didn’t go back and see it.

“Q. Am I correct in my impression that a lapse of time occurred between the last turning of the propeller by the main engine and the first turning of the propeller by the turning gear?

“A. Yes.

“Q. How long a period elapsed when the propeller was motionless?

“A. The definite time I couldn’t say. I would say approximately, however, two minutes.

“Q. That would be two minutes following the last maneuvering order? A. Yes.

“Mr. Biele: May I see Exhibit 7, please?

“The Witness: Strike that last statement. I would say approximately between three and five minutes. It takes a little bit longer to bleed all the steam.

“Q. Would it be an accurate statement that the propeller was motionless from the time the last stop bell is shown in the engine room bell book?

“A. Until when?

“Q. Until you started the jacking gear? [359]

(Deposition of J. J. Green.)

“A. No.

“Q. Does the propeller turn in the interim between the last stop bell received from the bridge and the commencement of the jacking operation?

“A. It could have. In bleeding the steam from the lines you bleed it through the throttle.

“Q. How is that operation accomplished?

“A. The main water stops are secured and the steam allowed to drop, and in the process the steam drops approximately 25 per cent. The rest is bled through the throttle.

“Q. When you say you bleed the steam, you mean you empty all the steam that is in the boiler?

“A. No, no. The steam that remains in the lines and the throttle.

“Q. How many turns of the propeller would that steam impart? A. Maybe none.

“Q. Do you recall what it did on this occasion?

“A. No.”

Mr. Howard: That concludes the deposition of Mr. Green and I offer that in evidence, your Honor.

The Court: It is now received in evidence as a part of the libelant's case in chief with like effect as if the witness were present, were sworn and was testifying orally from the stand. Will you turn back to that phrase we were discussing and remind me of the page? At [360] the moment I don't—

Mr. Howard: Page 30, the last answer.

The Court: Wait just a minute.

(Brief pause.)

The Court: You may proceed with the libelant's case in chief.

Mr. Howard: I would like to next read the deposition of witness Pilar.

The Court: Proceed.

Mr. Howard: This is the deposition of Matthew G. Pilar taken at Seattle on April 10, 1958.

Mr. Crutcher: Commencing at Page 3, your Honor, on Line 10. Direct examination by Mr. Howard.

(The deposition of Matthew George Pilar was read as follows:)

DEPOSITION OF
MATTHEW GEORGE PILAR

"Q. Will you state your full name, please?

"A. Matthew George Pilar.

"Q. What is your address, Mr. Pilar?

"A. At the present time it is 4615 West Stevens Street, Seattle, Washington.

"Q. And what is your age?

"A. Forty-two.

"Q. Do you hold any license issued by the United States Coast Guard?

"A. Chief Engineer-Marine-Steam. [361]

"Q. Steam?

"A. Steam; any horsepower; any tonnage.

"Q. How long have you held a Chief Engineer's license?

"A. Oh, I don't know. Maybe 13 or 14 years.

(Deposition of Matthew George Pilar.)

“Q. Have you been going to sea as a licensed engineer during all that period?

“A. No; not all that period. I have been ashore for the past 10 years, I would say.

“Q. When did you return to service as a licensed engineer?

“A. That was January 7, 1957.

“Q. What was your ship assignment at that time? A. Fourth Engineer.

“Q. On what ship?

“A. SS Cotton State.

“Q. Where did you join the vessel?

“A. In Seattle.

“Q. At the present time, Mr. Pilar, are you employed?

“A. At the present time I am on my vacation, taking a trip off, but I am still employed, I guess, by the company. I figure on going back on the ship when it arrives as a Chief Engineer.

“Q. As Chief Engineer on what ship?

“A. The Cotton State.

“Q. Is that the same ship by the name of Cotton State that you previously mentioned as having joined as Fourth [362] Engineer on January 7, 1957?

“A. No; the ship previous to that was a C-2 named the Cotton State, and then there was a transfer made by the company when they acquired this one which is a Victory ship and which is named the Cotton State now.

“Q. Both operated by States Marine?

(Deposition of Matthew George Pilar.)

“A. Both by States Marine Steamship Company.

“Q. Do you have any plans to be in Seattle or in this area during the period of the next three to six months?

“A. I am leaving Seattle Saturday for New York, and I plan on staying there until the ship arrives somewhere in the States, and wherever that is, I will pick the ship up there.

“Q. In other words, you don't know when you will be back in the City? A. No; I don't.

“Q. Mr. Pilar, do you recall an incident occurring aboard the former Cotton State at Everett, Washington, on or about January 10, 1957, involving the propeller of that vessel?

“A. I do.

“Q. Were you aboard the vessel at that time?

“A. I was aboard.

“Q. What watch had you stood on the day that the accident occurred—what watch hours? [363]

“A. I was on a night security watch that night. That would be from 5:00 p.m. to 8:00 a.m., the next morning.

“Q. Prior to 5:00 p.m., had you stood any watch? A. I did. I was on day work.

“Q. And what hours did you work day work?

“A. That was from 8:00 a.m. to 5:00 p.m.

“Q. Were you on duty in the engine room during the time that the vessel proceeded from Seattle to Everett?

“A. I was in the engine room assisting the

(Deposition of Matthew George Pilar.)

Second Engineer. It was my watch, but the Second was sent down by the Chief Engineer to take over the watch and show me so I could pick up the plant because it had been quite awhile since I had been to sea, and there were a few things I wasn't sure of and I wanted to know. I didn't want it; it was the Chief's idea that the Second would be there to assist me, and I was only assisting him because he took over the watch.

"Q. Which engineer actually handled the controls in the operation of the plant during this voyage from Seattle to Everett on January 10, 1957?

"A. It was Mr. Green.

"Q. Was he the Second Engineer?

"A. He was the Second Engineer.

"Q. Did you remain in the engine room during the course of that passage? [364]

"A. I was down there all the time during the whole passage.

"Q. Now, you mentioned you were also working as a night security engineer from 5:00 p.m., on January 10, to 8:00 a.m. the following morning. State, please, what the duties and responsibilities were of the night security engineer on the Cotton State?

"A. Well, the responsibility of the night security engineer at that time was, when the night engineer came aboard the ship and took over the plant, he was to be aboard the ship. I could stay in my room. I could stay in my bunk. I could sleep. But I was responsible for the plant, and I was

(Deposition of Matthew George Pilar.)

aboard in case there ever was a need of help with the plant. I would assist him or help him out if there was any trouble.

“Q. Who was the night engineer that you have just mentioned?

“A. I don't recall his name. It is in the logbook here. Kane.

“Q. Was he a regular member of the ship's complement?

“A. A regular member of the ship's crew?

“Q. Right.

“A. No; he was a relief engineer.

“Q. What hours was he on duty aboard the vessel?

“A. His hours were supposed to be from 5:00 p.m. to midnight and another relief engineer comes at midnight to 8:00 a.m. [365]

“Q. Had you had any previous experience on C-2 type vessels before you joined the Cotton State on January 7, 1957?

“A. That was the first C-2 I ever had any experience with.

“Q. After the several days which you served on this vessel before this accident occurred, did you feel that you were competent and capable to take over the responsibilities of a night security engineer?

“A. I was. I felt I was capable of taking over as a night security engineer because I had been down there a couple of days, and it doesn't take long to learn the plant if you have had any ex-

(Deposition of Matthew George Pilar.)

perience with other plants. It is just a little different, and I picked up the few 'nicks' I figured I had to pick up.

"Q. Will you state whether you can identify the document which is before you, and which has already been marked for other deposition purposes as Exhibit 6? What is that document?

"A. It is the engine room rough log.

"Q. Does it include the period involved by this accident on January 10, 1957?

"A. What is that?

"Q. Does it include the period of this accident on January 10, 1957? A. It does.

"Q. Referring to the date and night of the accident, will [366] you examine the logbook and tell me if there are any entries in that logbook that were made by you? Let's refer first to the line designated as p.m., 1:00 to 4:00?

"A. No; there is nothing there.

"Q. Nothing in the 1:00 to 4.00 p.m. line?

"A. No.

"Q. Referring next to the 5:00 to 8:00 p.m., line, will you state whether or not you made any of the entries in that section of the logbook on January 10?

"A. From 5:00 p.m. to 8:00 p.m. I made the fuel oil settler soundings.

"Q. Are they the entries appearing towards the right-hand side of the page being P.S. 11'3" and S.S. 4'5"? A. That is right.

"Q. Those were made by you?

(Deposition of Matthew George Pilar.)

“A. Those were made by me.

“Q. And do you recall when those entries were made?

“A. Not exactly when. They were made after arrival. That is all I can say.

“Q. Referring to the other entries on the 5:00, 6:00 and 7:00 o'clock lines for January 10, do you recognize the handwriting?

“A. It looks like Mr. Green's handwriting—the handwriting of the Second Engineer.

“Q. Did you make any of the entries on any of those lines, [367] 5:00, 6:00 and 7:00?

“A. On line 7:00 I entered my signature as Fourth Engineer and night security.

“Q. That is towards the right side of the page?

“A. Yes.

“Q. Is that the only entry that was made by you on those three lines?

“A. That is the only entry I made.

“Q. Now, referring to the 8:00 p.m. line for January 10, will you examine that and tell me whether any of those entries were made by you?

“A. No, sir.

“Q. Do you know who made those entries?

“A. By looking at the handwriting, they were made by the night engineer, Mr. Kane.

“Q. Referring to the columns under temperatures: Sea, discharge, and condensate, do you find some check marks? A. I do.

“Q. Do you know who made those check marks?

“A. The Chief Engineer.

(Deposition of Matthew George Pilar.)

“Q. What do those check marks represent or stand for?”

Mr. Biele: Objection.

The Court: Overruled.

(The reading was continued as follows:)

“Q. Answer the question subject to that [368] objection.

“A. I didn’t hear what he said.

“Q. Do you know what those check marks stand for?

“A. Yes; they were made by the Chief Engineer.

“Q. What do they mean or what do they stand for?

“A. Well, the Chief Engineer usually marks a check mark if there is an entry made in the logbook which is wrong. These here must have been wrong because that is why the checks are there.

“Q. Do you find any check marks elsewhere on this page of the log? A. I do.

“Q. The next watch also has some.

“Q. On the 12:00 midnight line? Is that what you refer to? A. That is one I refer to.

“Q. Do you know who made those check marks?

“A. The Chief Engineer.

“Q. How do you know that those were made by the Chief Engineer?

“A. Because you can go through the logbook and you will find more marks like that by the Chief Engineer, and it is a mark the Chief Engineer

(Deposition of Matthew George Pilar.)

usually puts in when we make a mistake in our temperature reading columns or other mistakes or something we omit.

“Q. Will you state whether or not that was an understood practice as far as logbook entries in the engine room [369] log book of the Cotton State were concerned?

“Mr. Biele: I will make the same objection that I previously made.”

Mr. Crutcher: And we renew that objection at this time, your Honor, the objection being that this engineer who had just come aboard the vessel was not qualified to testify to a custom aboard the ship, and that is actually what the question calls for, an understood practice; in other words, some subjective understanding so far as the witness is concerned.

The Court: Have you anything to say about it?

Mr. Howard: Well, your Honor, this witness continued to serve on this vessel for at least one voyage. He certainly should be in a position to testify as to whether this was a practice which they followed on this ship or whether it was common on all ships.

Mr. Crutcher: Your Honor, I would make the further objection that I can't understand what possible relevancy these check marks and temperature columns have to do with the accident that is involved here.

Mr. Howard: I can't either, your Honor, but this question was raised by Mr. Biele in his cross-

(Deposition of Matthew George Pilar.)

examination of witness Kane, and that's the reason I am going into it at this time in this deposition, to try and clear up the question which was opened up by [370] the cross-examination of Mr. Biele.

The Court: The objection is overruled.

(The reading was continued as follows:)

“A. It is not a standard practice by everyone, but by this Chief it was.

“Q. What licensed engineer was on duty and in charge of the engine room after the vessel was docked at Everett, Washington, on the evening of January 10?

“A. After the vessel was docked?

“Q. Right.

“A. Mr. Kane, the night engineer.

“Q. Now, did you observe Mr. Kane's presence in the engine room?

“A. I saw him there, yes.

“Q. When did you first see him?

“A. Well, a few minutes after we had finished with the engines. I don't recall the exact time.

“Q. Were you present in the engine room when the signal was given on the telegraph 'finished with engine'?

A. I was.

“Q. —which was logged at 1835 hours?

“A. I was.

“Q. Were you present in the engine room after that time when the turning gear was engaged?

“A. I was. [371]

(Deposition of Matthew George Pilar.)

“Q. Who engaged the turning gear?

“A. The Second Engineer, and I assisted him.

“Q. About how long was that done after the bell ‘finished with engines’ was received?

“A. To be specific, I can’t say, but it wasn’t more than four or five minutes.

“Q. What did you do after the turning gear was engaged?

“A. After the jacking gear was engaged the plant was usually secured. The night engineer was there, and the second engineer was relieved by the night engineer, and he left the engine room, and immediately after that I left the engine room.

“Q. Where did you go?

“A. I went up topside and had a cup of coffee.

“Q. What did you do next?

“A. I must have stayed topside—I don’t recall how long, but I did have a cup of coffee, and I decided to go back down below.

“Q. To the engine room?

“A. To the engine room.

“Q. Who did you observe in the engine room when you returned on that occasion?

“A. The Second Engineer and the night engineer were there and the jacking engine had just kicked out.

“Q. What did you observe as far as the condition of the [372] plant was concerned when you returned to the engine room?

“A. The condition of the plant was good except for the jacking gear being kicked out.

(Deposition of Matthew George Pilar.)

“Q. When you say ‘kicked out,’ what do you mean?

“A. Well, by kicked out, it stopped. It could be the overload or it could be something back aft hit the propeller to throw the overload switch out.

“Q. Did you ascertain at that time what caused the turning gear to kick out?

“A. At that time I did not know. I just had to look to see.

“Q. What did you do thereafter?

“A. Well, then I went back to see. They were talking. Someone by then came down. I don’t recall too much of what happened, but, anyway, after that I went up on top, and that is when they were talking about the barge hitting the propeller. That is when we went back aft, and the Chief was back there on the main deck.

“Q. The Chief Engineer was back aft on deck?

“A. At that time he was back there.

“Q. And what mate was back there?

“A. I don’t recall his name. I think it was the First Mate.

“Q. And where did you observe them?

“A. They were back aft at the fantail of the deck.

“Q. Did you go back there yourself? [373]

“A. I was back there.

“Q. Will you describe what conditions existed around the stern of the vessel when you got back there?

(Deposition of Matthew George Pilar.)

“A. When I got back there the warning light was damaged, and they already had it on deck.

“Q. On which side?

“A. On the starboard side.

“Q. And how was it damaged? Did you make an observation of it?

“A. Oh, I did at the time, but to tell you how it was damaged—the board was broken, I know.

“Q. What did you do after that, Mr. Pilar?

“A. After that I went back down in the engine room. I don’t know how long I stayed down there after that.

“Q. Do you know when the turning gear was placed in operation again?

“A. The exact time, no.

“Q. Who was on duty in the engine room when you returned to it after going out to the stern of the vessel? A. Who was on duty?

“Q. In the engine room?

“A. When I left the engine room?

“Q. When you returned to the engine room after being out on the stern of the vessel?

“A. The night engineer, Mr. Kane. [374]

“Q. Did you observe any barges or other floating craft alongside the vessel when you were out on deck?

“A. I did. I think there was another barge there, too.

“Q. Where was it located?

“A. Well, right now the exact position I don’t

(Deposition of Matthew George Pilar.)

know. It was on the starboard side at about No. 4 hatch.

“Q. Was there a barge——

“Mr. Biele: Are you shaking your head that you don’t know?

“The Witness: I don’t know.

“Mr. Biele: Is that why you are shaking your head?

“The Witness: I don’t know. They were there, but the exact spot I don’t know.

“Q. When you went out on deck and back to the stern of the vessel was there a barge under the stern of the vessel?

“A. There was a barge there.

“Q. Describe what was on the barge.

“A. Lumber.

“Q. Can you state whether or not the barge was in contact with the propeller or rudder of the vessel at that time?

“A. At that time? I don’t know. It has been so long ago, I can’t remember that incident very clearly.

“Q. Mr. Pilar, will you state from your experience as a licensed engineer on merchant vessels what the customary [375] practice has been with respect to when the turning gear is engaged after a vessel is docked?

“A. After it comes into a dock the customary practice is to engage the turning gear as soon as we get ‘Finished With Engines.’ We secure the plant. Steam is off the engine and we automatically

(Deposition of Matthew George Pilar.)

engage the jacking engine or what is called the turning engine. That is our usual procedure.

“Q. In terms of minutes or hours, how long after? A. Four or five minutes.

“Q. After you get the ‘Finished With Engines’ bell, how soon is the turning gear or jacking gear engaged?

“A. In four or five minutes it is engaged. If the ship is coming in to port, the Second Mate is back aft, and he usually checks to see that everything is clear. If there is anything there, we know almost immediately. We will know immediately that it isn’t clear and we wait for the Clear—the moment we get the ‘Finished With Engines’ and we don’t hear anything from the bridge, we engage it immediately after ‘Finished With Engines’ which is three or four minutes.

“Q. Is that the procedure which was in effect on the Cotton State on the day this accident occurred?

“A. That is the procedure that was in effect there.

“Q. Is there any different procedure in effect generally on [376] merchant vessels as to the engagement of the turning gear in preparation for leaving a dock or going to sea?

“A. On leaving a dock it is altogether different. We always call the bridge to get a clearance before engaging the electric engine because the ship may lie alongside a dock for a day or so or maybe hours, and something could have pulled up along-

(Deposition of Matthew George Pilar.)

side the propeller, a barge or anything like that, so we never turn the jacking engine until we get the clearance from the bridge. The mate usually checks back there and lets us know everything is in proper order to engage the jacking gear or engine.

“Q. What was the procedure in effect aboard the Cotton State after you joined it on January 7, 1957, regarding logging of times when the jacking gear was engaged or in operation?

“A. May I have it again?

“Q. Was there any procedure specified aboard the Cotton State after you joined it on January 7, 1957, regarding the logging of entries as to times when the jacking gear was engaged or in operation?

“A. There was by the Chief Engineer. He mentioned it to me, and I guess to the other engineers, more than once to enter in the logbook every time the jacking gear was engaged.

“Q. Were there any written instructions posted or in effect [377] aboard the Cotton State on January 10, 1957, regarding the engagement of the turning gear? A. I didn't see any there.

“Mr. Howard: You may cross-examine.

“Cross-Examination

“By Mr. Biele:

“Q. Mr. Pilar, what time was it that you went to work on the morning of the 10th?

“A. The 10th?

(Deposition of Matthew George Pilar.)

“Q. Yes. A. That is the day——

“Q. That is the day of the accident.

“A. In the morning I went to work.

“Q. What was the first time you went to work?

“A. 8:00 o'clock a.m.

“Q. And you remained on watch how long?

“A. Until 5:00 p.m.

“Q. Then at 5:00 p.m. you stayed on? Did you stay on watch, or were you observing the second assistant engineer in your study of the plant?

“A. At 5:00 p.m. I don't remember when the ship started to move, what time, but at 5:00 p.m. I was on watch, and when the ship started maneuvering the Second Engineer came down to do the maneuvering, and I was observing [378] and seeing how it was done so I would know the next time it was done.

“Q. Had you ever maneuvered the ship before?

“A. Not a C-2, no.

“Q. I take it by that answer you had never maneuvered the Cotton State—that particular ship?

“A. The Cotton State, no.

“Q. Now, you remained in the engine room until the vessel got to Everett?

“A. That is right.

“Q. —observing the second assistant engineer? A. That is right.

“Q. When you got to Everett the second assistant engineer was the one to engage the jacking gear?

(Deposition of Matthew George Pilar.)

“A. Well, I assisted. I was there to learn how and all of that.

“Q. You had never engaged a jacking gear before?

“A. Not on the Cotton State. I have engaged lots of others. They are all about the same, but they will have a little different trick maybe, you know.

“Q. Now, between the time you had ‘Finished With Engines’ at 1835 and the time you had gotten the jacking gear engaged, were there any maneuvers made on the engine? A. What is that?

“(Question read.) [379]

“A. No.

“Q. Did you have to bleed out any steam?

“A. Opened the drains.

“Q. Did you apply it to the turbine?

“A. The drain is on the main steam line.

“Q. Did that have the effect of turning the propeller? A. No.

“Q. How long did it take the second engineer to start up the jacking gear?

“A. The jacking engine itself?

“Q. Yes; how long did it take him to engage it—to get it running?

“A. A minute and a half or two minutes at the most. Wait. I am mistaken. It doesn’t even take that long. You just press the switch and she is engaged.

“Q. And that starts the propeller rotating?

(Deposition of Matthew George Pilar.)

“A. That starts the jacking engine to turn the propeller.

“Q. I take it from your direct testimony you had no word one way or the other from the bridge about whether or not the stern of the vessel was clear?

“A. No. That was the usual procedure that we engage the jacking engine immediately after ‘Finished With Engines.’

“Q. And you didn’t know whether the stern was clear or not?

“A. We didn’t hear anything from the bridge so we would assume—— [380]

“Q. You didn’t hear anything from the bridge, so you assumed it was clear?

“A. We assumed it was clear.

“Q. After the jacking gear was engaged how long was it that you remained in the engine room, you, personally?

“A. In exact minutes I don’t know. It wasn’t very long. Maybe five or ten minutes.

“Q. When you left the engine room, was Mr. Kane in the engine room?

“A. He was there.

“Q. Was Mr. Green, the second assistant, in the engine room when you left the engine room?

“A. He was on the way up ahead of me, and I left after he did.

“Q. You left after he did?

“A. He probably wasn’t up to the top when I started up.

(Deposition of Matthew George Pilar.)

“Q. How long had Mr. Kane been in the engine room before you left?

“A. That is vague to me on the time. It could be five or ten minutes. I don't know.

“Q. Do you have any idea why the second assistant left the engine room?

“A. There was no need for him to be there any more. The night engineer was there to relieve us.

“Q. Did you have any knowledge or indication at the time you [381] left the engine room that the jacking gear was in trouble or was going to kick out or had kicked out?

“A. The jacking gear was running when I left.

“Q. Did you have any discussion or talk with Mr. Kane, the relief engineer?

“A. No; I didn't. I had seen him there, and I didn't say anything. The second engineer did all the talking to him.

“Q. Did you overhear the second engineer talking to him? A. I did.

“Q. Where did they have their conversation?

“A. Right by the log desk.

“Q. Where were you?

“A. I was in the vicinity of the log desk looking and checking things over for myself.

“Q. Did the second assistant leave any written instructions to the night engineer that you know of? A. Not that I know of.

“Q. Mr. Pilar, a jacking gear such as was on the Cotton State at this time isn't found on a Liberty ship, is it? A. No, sir.

(Deposition of Matthew George Pilar.)

“Q. And it isn’t found on a Diesel-driven ship?

“A. Not this type, no.

“Q. Ships that have turbo-electric drives don’t have that type of equipment, do they? [382]

“A. Not this type of jacking gear.

“Q. Ships with reciprocating engines don’t have this type of equipment, do they?

“A. No. What does this have to do with all of this?

“Q. Just to be certain in my mind, after you and the second assistant started the jacking gear, what was your next movement or what did you do next? A. After we started——

“Q. After you completed or finished with the jacking gear, what did you do then?

“A. I checked over the plant to see that everything was all right. It is normal procedure to check it over, and the night engineer was there, and the plant was secured, and we left.

“Q. And that took maybe five or ten minutes?

“A. I am vague on the time. It could have been five minutes or ten or fifteen minutes. I don’t know. It has been so long ago I don’t know. I get relieved so many times I don’t remember.

“Q. Now, you don’t know when the jacking gear kicked out, do you? A. No.

“Q. You don’t know who was in the engine room when the jacking gear kicked out?

“A. The night engineer was in the engine [383] room.

“Q. Did he discuss it with you?

(Deposition of Matthew George Pilar.)

“A. What?

“Q. Did he discuss that with you and say he was in the engine room when the jacking gear kicked out?

“A. I came down after the jacking engine was kicked out, and he said the jacking gear kicked out.

“Q. Did he say it kicked out while he was in the engine room?

“A. It had to be while he was there.

“Q. You mean he was there when you left and he was there when you returned, so you assume he was there all the time?

“A. He was there when I left, and he was there when I came back.

“Mr. Biele: That is all.

“Redirect Examination

“By Mr. Howard:

“Q. Do I understand from your answers to questions by Mr. Biele regarding the jacking gear on these types of vessels that while they may not have the same type, they have some other type of jacking gear? A. They do.

“Mr. Howard: Do you waive reading and signing of this deposition?

“The Witness: I do. [384]

(Deposition of Matthew George Pilar.)

“Recross-Examination

“By Mr. Biele:

“Q. Let me ask this. Mr. Howard brought it up. You don’t turn over the propeller on reciprocating engine ships when you get into port, do you? A. No, sir.

“Q. You don’t start up the propeller as soon as you finish with engines on steam reciprocating ships?

“A. No, but they have a jacking engine on them.

“Q. But you don’t start up the propellers as soon as you get into port when you finish with engines? A. No.

“Q. And you don’t do it on a Diesel-driven ship? A. No.

“Q. And you don’t do it on a turbo-electric ship? A. No.

“Redirect Examination

“By Mr. Howard:

“Q. Do you do it on all turbine-driven ships?

“A. We do.

“Q. What kind of ships are C-2 ships?

“A. Turbo-driven ships—steam turbo.

“Q. And are the jacking gears started up immediately after arrival at the dock and finished with engines on all [385] steam turbo ships?

(Deposition of Matthew George Pilar.)

“A. They are.

“Q. And are the jacking gears started up again before departure from a dock on all steam turbo-driven ships?

“A. Usually an hour prior to departure.”

Mr. Howard: We offer that deposition in evidence, your Honor.

The Court: It is received in evidence as a part of the libelant's case in chief with like effect as if that witness were here and sworn and testified orally from the stand. At this time we will take a short recess.

(Short recess.) [386]

November 28, 1958—After Midafternoon Recess

(All parties present as before.)

The Court: You may proceed.

Mr. Howard: Your Honor, I would like to recall Captain McLaughlin.

The Court: Is there any objection to the fact that the clerk is not here?

Mr. Biele: No, your Honor.

Mr. Howard: No objection.

The Court: Court is in session. You may now proceed.

ETHON C. McLAUGHLIN

recalled as a witness in behalf of libelant, being previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Howard:

Q. Captain McLaughlin, will you state what the procedure is at ports on the West Coast of the United States with respect to who provides the mooring lines for barges that are brought alongside merchant vessels?

The Court: The clerk is now present. You may proceed.

Mr. Crutcher: Your Honor, I will object [387] to that question on the ground no proper foundation has been laid for asking such a question.

The Court: Will you read the question, Mr. Reporter?

(The reporter read the last question.)

The Court: The objection is sustained, with leave to qualify the witness.

Mr. Crutcher: May it please the Court, I would also like to object to the question on the grounds that it is not material to any question in this case. It has already been established——

The Court: The Court will see if that objection is made later. The Court will not rule upon that objection now because the question that will bring

(Testimony of Ethon C. McLaughlin.)

out this answer is not before the Court or Counsel.
Proceed.

Mr. Howard: Your Honor, may I make a statement in connection with this?

The Court: You may.

Mr. Howard: This witness and other witnesses have testified that the line used to secure the forward end of one of these barges was provided from the ship. I wish to show by this witness that that is the common and usual and accepted practice at ports on the Pacific Coast, that there should be no significance attached to [388] the fact that the line was provided by the ship rather than the barge. This has come up in the course of discussions with the Court earlier today on this very question.

The Court: The Court's ruling last announced regarding the privilege extended to qualify the witness will still stand.

Q. Well, Captain, are you familiar with the practice at ports on the Pacific Coast with respect to who furnishes lines to secure barges alongside merchant vessels?

The Court: Answer yes or no.

A. Yes.

The Court: Did you ask him if he was qualified?

Mr. Howard: I asked him if he was familiar with the practice.

The Court: Then you may proceed.

Q. (By Mr. Howard): What is that practice?

Mr. Crutcher: Your Honor, I will object at this

(Testimony of Ethon C. McLaughlin.)

point. The testimony in this case by this very witness has already established that the line in this case was provided by the vessel. There is no dispute on that and I don't see what relevance custom has to do with it.

The Court: The objection is overruled. [389]

Q. (By Mr. Howard): What is the practice, Captain?

A. It is the practice that the ship furnish the lines for all barges that come alongside on the West Coast.

Q. Does that include the port of Everett?

A. That includes the port of Everett, with the exception——

Q. One exception?

A. One exception. If an oil barge come alongside to fuel up, there's a crew always on board that barge and they pass us their line.

Q. Now I refer you again to the situation of unmanned barges; that is, barges that don't have a crew of their own aboard.

A. That's right, sir, the only time that we furnish lines for is where they're not manned.

The Court: I think his last answer is confused in statement, if not in thought. I do not understand the answer.

Q. (By Mr. Howard): Captain, with barges of the type that are involved in this case, lumber-laden barges which are towed by a tug and which barges have no crew of their own apart from the crew that is supplied by the tug, what is the prac-

(Testimony of Ethon C. McLaughlin.)

tice with respect to who furnishes the barge mooring lines?

A. The practice is that the ship furnishes the lines.

Q. Is that true at Everett? [390]

A. Yes, sir.

Q. At Seattle? A. Yes, sir.

Q. And other West Coast United States ports?

A. Yes, sir.

Mr. Howard: That's all.

The Court: You may cross-examine.

Cross-Examination

By Mr. Crutcher:

Q. Mr. McLaughlin, how many times prior to 1955 had you been in the port of Everett?

A. Prior to that I was sailing out—not into port of Everett. The first time in the port of Everett.

Q. Do I understand, then, that on the occasion of this accident on January 10, 1957, this was the first time that you had ever been in the port of Everett? A. That was.

Mr. Crutcher: On the basis of that, your Honor, I move to strike the answer of the witness as not relevant and as not competent evidence and testimony.

The Court: The Court knows no reason for so limiting the source of his information. It has not been shown that that is the only information he

(Testimony of Ethon C. McLaughlin.)

ever had or ever gained about it. The objection and motion are [391] overruled and denied.

Q. (By Mr. Crutcher): Captain, had you discussed the question of who would furnish lines with anyone on this particular occasion when the vessel Cotton State went into Everett? A. No, sir.

Q. Had you previously to that time had any occasion to discuss the custom at the port of Everett in that regard with anyone else? A. No, sir.

Q. Have you since that time discussed the matter of custom at the port of Everett with anyone other than Counsel? A. No, sir.

Mr. Crutcher: I have no other questions, your Honor.

Redirect Examination

By Mr. Howard:

Q. Was the practice which was followed at Everett on this occasion the same as you had had experience with at other ports on the Pacific Coast? A. Yes, sir.

The Court: He has not stated the source of his knowledge, if he had any, and he said he had knowledge. He has not been asked what the source was. [392]

Q. (By Mr. Howard): Well, what is the source of your knowledge with respect to the practice of furnishing barge lines, Captain?

A. In Long Beach, San Francisco, Oakland—

The Court: The question is what is the source of your knowledge about what the custom was and

(Testimony of Ethon C. McLaughlin.)

the practice was at Everett. You say you never were there and you never talked with anybody about it. The question is, from what source did you gain the information which you said you had of a knowledge of such a custom.

A. Well, as far as Everett was concerned, I didn't know a barge was coming alongside until I saw them when I came from aft.

The Court: I am going to have to grant the motion. Mr. Howard.

Mr. Howard: Well, your Honor, I would like to point out that my question to this witness was not limited to the port of Everett. My general question was at West Coast ports of the United States. After he had answered that question, then I asked him about Everett and Seattle.

The Court: The Court will reconsider the motion if that is all the testimony to be had from this witness.

Mr. Crutcher: Your Honor, I do renew the [393] motion on the ground that while I don't concede that this matter is relevant at this stage of the proceedings, I certainly can't see any foundation for what the witness has said was the practice.

The Court: The motion is granted for the reason that up to now the state of the record shows to this Court and the Court finds, concludes and decides from the evidence adduced up to this time that it has not been positively proved that this witness had any knowledge about the custom or prac-

(Testimony of Ethon C. McLaughlin.)

tice as to who furnished the lines at the port of Everett before this occasion.

Mr. Howard: Then the motion that the Court is granting only relates to his testimony at the port of Everett?

The Court: The port of Everett.

Mr. Howard: Very well, your Honor.

The Court: And regarding his answer concerning what the custom was about furnishing lines at Everett.

Mr. Howard: I am satisfied with the record, your Honor, with the witness' answers to the other questions.

The Court: You may proceed. Any other questions of this witness?

Mr. Crutcher: Your Honor, I believe it is [394] Mr. Howard's redirect at this point.

Mr. Howard: I have no other questions.

Mr. Crutcher: I have no questions.

The Court: Step down.

(Witness excused.)

The Court: Proceed with the libelant's case in chief.

Mr. Howard: The libelant rests, your Honor.

The Court: The libelant rests. The respondents and cross-libelants may now proceed.

Mr. Crutcher: Thank you, your Honor. Call Mr. Knowles.

ROY E. KNOWLES

called as a witness in behalf of respondents and cross-libelants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crutcher:

Q. Please state your full name to the Court.

A. Roy E. Knowles, K-n-o-w-l-e-s.

Q. Where do you live, Mr. Knowles?

A. Route 1, Box 202, Monroe, Washington.

Q. And what is your profession?

A. Marine surveyor.

Q. How long have you been engaged in the practice as a [395] marine surveyor?

A. Since 1946.

Q. Prior to that time had you had any experience in the merchant marine? A. Yes, sir.

Q. When was that?

A. From 19—in the merchant marine from 1919 to 1935.

Q. And prior to that time I believe you had been in the United States Navy? A. Yes, sir.

Q. Did you receive any license from the United States Coast Guard while you were in the United States Navy? A. Yes, sir.

Q. State to the Court what that license or those licenses were.

A. Third assistant and first assistant engineer while I was in the Navy.

Q. And thereafter while you were in the merchant marine did you receive further licenses?

(Testimony of Roy E. Knowles.)

A. Chief engineer unlimited, yes, sir.

Q. When was that? A. 1921, February.

Q. And did you have any service in the merchant marine as chief engineer?

A. Yes, I did. [396]

Q. Would you tell the Court briefly what that experience was?

A. Well, approximately eight years I was chief engineer.

Q. Serving aboard vessels? A. Yes, sir.

Q. And thereafter were you employed by the United States Department of Commerce?

A. As an assistant inspector of boilers.

Q. Was that a function subsequently taken over by the Coast Guard Service? A. Yes, it was.

Q. When did you enter service with the Coast Guard itself?

A. When they took the Bureau over, and I believe it was in 1942.

Q. And did you continue as an inspector for the Coast Guard? A. Until January, 1946.

Q. Was your service as a marine inspector continuous from 1935 until 1946 for the federal government? A. Yes, sir, it was.

Q. Would you state to the Court briefly what sort of duties you performed as an inspector?

A. Well, inspector of hulls and boilers, machinery.

Q. Was that of the merchant marine?

A. The merchant marine exclusively, yes.

Q. Since 1946 I believe you said you've been a

(Testimony of Roy E. Knowles.)

professional [397] marine surveyor. What sort of work do you specialize in?

A. In hull and engines.

Q. Are you familiar with the propulsion machinery and machinery generally connected with the engine room so far as merchant marine vessels of the United States are concerned? A. Yes.

Q. On January 18, 1957, did you attend a survey of the scow Eclipse No. 15 at Lake Union Dry Dock? A. Yes, I did.

Q. And were you there representing both the owners of the SS Cotton State and The Pacific Tow Boat Company?

A. I represented the underwriters of the SS Cotton State.

Q. Was that the hull underwriters?

A. The hull underwriters, yes, sir.

Q. And did you also represent The Pacific Tow Boat Company? A. Yes, I did.

Q. And subsequently did you attend a survey of the damaged propeller of the SS Cotton State?

A. I did.

Q. Arising out of the same accident?

A. Yes, I did.

Q. Mr. Knowles, handing you a photograph of the side of the damaged vessel——

The Clerk: It will be marked Respondent's [398] Exhibit No. A-1.

(A photograph was marked Respondents' Exhibit No. A-1 for identification.)

(Testimony of Roy E. Knowles.)

Q. (By Mr. Crutcher): I ask whether you recognize the subject matter of that photograph?

The Court: Answer yes or no.

A. Yes.

Q. (By Mr. Crutcher): Will you tell the Court what that photograph represents?

A. Well, it represents the side and the chine of the Eclipse Barge 15.

The Court: Photo of what?

A. Chine.

The Court: How do you spell that word?

A. C-h-i-n-e.

The Court: Of the side and chine?

A. Yes, sir.

The Court: Will you please say what that is?

A. The chine is the knuckle or the side here of the barge.

The Court: What is the difference between the side and chine? They are not the same thing, are they?

A. All right, the side.

The Court: Side of what? [399]

A. The barge Eclipse 15.

The Court: E-15?

A. Yes, sir.

The Court: Proceed.

Q. (By Mr. Crutcher): Does that show the appearance of the barge Eclipse No. 15 while it was in dry dock, Mr. Knowles? A. Yes, sir.

Q. Did you examine the damage which is shown in that photograph? A. Yes, we did.

(Testimony of Roy E. Knowles.)

Q. By "we" do you mean there was another surveyor?

A. I and another surveyor representing other interests.

Q. Would you describe to the Court the damage to the barge as you observed it very briefly?

A. Well, the barge was damaged on the bottom and through the side members and up seven planks on the side.

The Court: How far from the outer edge inward of the barge was the bottom damaged. the bottom planking?

A. I believe it was seven planks, sir.

The Court: Seven planks?

A. I have my survey report, sir. I can look——

The Court: And the side?

A. That is visible.

The Court: How many planks were damaged on the [400] side.

A. The seventh plank is——

The Court: On the side up to the seventh plank counting from the bottom or the water level?

A. Yes, sir.

The Court: Is that six planks or is that seven planks?

A. The seventh plank is damaged.

The Court: You may ask him another question.

Q. (By Mr. Crutcher): Did you measure to find out how far aft of the stern of the barge that damage appeared?

A. That was forty feet aft of the bow.

(Testimony of Roy E. Knowles.)

The Court: Is that the location——

A. Of the damage, yes, sir.

The Court: The fore and aft location?

A. Yes, sir, forty feet aft of the bow.

The Court: At a point forty feet aft of the bow.

A. Yes, sir.

The Court: How long is the vessel?

A. 110 feet.

The Court: You may inquire.

Q. (By Mr. Crutcher): Could you observe any markings which would indicate a cut on the side of the barge? A. Yes. [401]

Mr. Howard: I beg your pardon, I didn't get the last question.

The Court: Read it, Mr. Reporter.

(The reporter read the last question and answer.)

Q. (By Mr. Crutcher): How many of those were there, if there were any?

A. There were two.

The Court: Two what?

A. Cuts.

Q. (By Mr. Crutcher): Assuming that this barge had been under the counter of the SS Cotton State prior to your examining it and that the barge had been struck by the propeller of the SS Cotton State, the propeller being driven by the jacking gear, can you state to the Court whether from your examination of the barge hull, and I refer to the barge, of course, Eclipse No. 15, you could see evi-

(Testimony of Roy E. Knowles.)

dence from which you could form an opinion as to whether it had been struck more than once by the propeller?

A. We were all of the opinion that the barge had been struck twice.

Q. Can you state whether, had the barge been struck only once by the propeller, the damage would have been less than it was?

A. We have to consider that the after cut or the smaller [402] cut was the first cut, because, the propeller was going in the astern motion, and it would be my answer that the second cut would cause a little more damage than the first cut.

Q. In terms of cost of repair, Mr. Knowles, did the second cut make a difference so far as materials and time and labor spent for repairs were concerned? A. Yes.

Q. Are you familiar with the repairs which were effected to this barge?

A. Yes. We wrote up the specification.

Q. Did you afterwards examine the repairs?

A. Yes, we did.

Q. Were you shown a bill of materials for the repairs?

A. We drew up a bill of materials when we got the price.

Q. Are you familiar with the materials that did go into the repairs? A. Yes.

Q. Will you state to the Court what the difference in the second cut meant in terms of added cost of repairs and labor, if you know?

(Testimony of Roy E. Knowles.)

A. Well, we didn't break it down at the time of the survey, but looking at this it would be in my opinion approximately 30 per cent.

Q. Are you familiar with the practice of turning a jacking [403] gear on a steam turbine vessel after the vessel is finished with engines?

A. Yes.

Q. Have you done that yourself?

A. Yes, I have.

Q. On many occasions? A. Yes.

The Court: How many occasions? Did you say how many occasions?

Mr. Crutcher: I beg your pardon.

Q. (By Mr. Crutcher): Can you estimate for the Court about how many times you have done that?

A. Well, I would say maybe fifty times. I wouldn't know. In many ports.

Mr. Howard: The last few words?

A. I said in many ports. I've been around the world and I wouldn't know, but let's say fifty times.

Q. (By Mr. Crutcher): And what sort of vessels were these that you were engaged in?

A. They were steam turbine.

Q. Well, were they merchant vessels?

A. Merchant vessels.

Q. Is there any routine practice with respect to the action taken by the engine room in starting the jacking gear after the vessel is finished with engines and after the [404] propeller has ceased turning? You can answer that yes or no, Mr. Knowles.

(Testimony of Roy E. Knowles.)

A. Yes.

Q. Are you familiar with that practice?

A. Yes.

Q. Would you tell the Court what that practice is so far as communication with the deck is concerned?

A. It is that you get permission from the bridge. You are notified that the stern area is clear.

Mr. Crutcher: I have no other questions, your Honor.

The Court: You may cross-examine.

Cross-Examination

By Mr. Howard:

Q. Mr. Knowles, after this accident occurred on January 10, 1957, you were asked to survey the damage for both the States Marine Line underwriters and the underwriters for The Pacific Tow Boat Company, is that correct?

A. I believe so, yes, sir.

Q. So you were working for both the libelant in this case and one of the respondents in this case?

A. I represented the underwriters for the Cotton State.

Q. Yes, and representing the underwriters you're really representing the vessel's interests then, are you not? [405]

A. I presume you come back to that, yes.

Q. Yes, and you're actually paid then by both of them, aren't you?

A. Paid by the Lloyd agents.

(Testimony of Roy E. Knowles.)

Q. For the work you did for the Cotton State?

A. Yes.

Q. As well as for the work you did for The Pacific Tow Boat Company. So if I called you, you would be willing to testify as a witness in this case in the same fashion as if you were called by the other side, is that correct?

A. I would, and I'd have to tell the truth. That's what I'm up here for.

Q. I haven't asked you to appear as a witness, have I?

A. No.

Q. You were working for both interests at the time, were you not?

A. I would say so.

Q. And before you were called to testify today in this case did you consult with Mr. Biele and Mr. Crutcher concerning the testimony that you have given?

A. Well, I was shown this picture, yes, and we talked over two or three items.

Q. How many times did you discuss this testimony with them?

A. Well, once—twice.

Q. Twice? [406]

A. Not what I was going to say, but my survey report.

Q. And did they ask you what your testimony would be about the use of the communication with the bridge before the engineer engaged the jacking gear?

A. Yes.

Q. Did you recall at that time that you had already been employed by the States Marine Corpora-

(Testimony of Roy E. Knowles.)

tion and had been paid by its underwriters for services performed in this case?

A. I raised the question.

Q. Did you have some reservation in your mind as to whether you should appear as a witness in this case?

A. Yes, I did.

Q. And you were advised by Counsel that it would be quite all right, is that correct?

A. That's right.

Q. So do you think that your testimony here is given on a strictly impartial basis or is it given on the basis of your prior employment in this case?

A. Prior appointment by you?

Q. By either party or both parties.

A. Well, it's strictly impartial.

Q. As you view it? A. As I view it.

Q. I take it that you've never served on a C-2 as an [407] engineer, have you?

A. No, I have not.

Q. There weren't any C-2's in existence when you were serving as chief engineer on vessels, is that correct?

A. That's correct.

Q. They were built after you quit going to sea, isn't that right?

A. That is right.

Q. So you can't testify as to anything from your own personal experience as an engineer on C-2 type vessels?

A. No.

Q. Now, Mr. Knowles, I want to be sure the Court and Counsel understand your testimony correctly. There weren't seven planks damaged on the bottom of this barge, were there?

(Testimony of Roy E. Knowles.)

A. There were six—I just read my report—there were six on the bottom and nine on the side.

Q. There were six on the bottom and nine on the side. What is this seven that you testified to earlier?

A. There are seven planks loosened fore and aft of the cut that had to be refastened and recalked.

Q. I see. Well, that doesn't refer to the extent that the damage extended in from the side along the bottom; it's six, not seven, is that right?

A. That's right.

Q. How wide are those planks, incidentally?

A. They are twelve inches.

Q. Twelve inches, so that represents about six feet then of damage from the side in on the bottom of the barge, is that right?

A. That's right.

Q. At the extreme point of damage, is that correct?

A. That would be correct.

Q. Now, Mr. Knowles, it is pretty difficult for you as a surveyor to sit here and tell us how many times the barge was struck by a propeller that was turning by a jacking gear, isn't that correct?

A. Well, I think if you will examine the picture, and it was our opinion there when we were talking about it that the thing had been struck twice.

Q. It was your opinion?

A. It was not only mine, it was the other surveyor's also.

Q. Well, we're not interested in your telling us about the other surveyor, I want your opinion now.

(Testimony of Roy E. Knowles.)

A. I'm of the opinion it was struck twice.

Q. Now, it could have been struck more than twice, couldn't it?

A. It could have been if the propeller went up through this large hole, yes.

Q. Now, Mr. Knowles, as you know, the three blades on the propeller of the Cotton State were damaged in this [409] accident, don't you?

A. Yes.

Q. You surveyed that damage, didn't you?

A. Yes.

Q. For the States Marine Line? A. Yes.

Q. And also for The Pacific Tow Boat Company? A. Yes.

Q. So you know that not two but three blades of the propeller were damaged? A. Yes.

Q. All right. Then isn't it true that the propeller struck that barge three times and not two times?

A. No. No, one blade was waived by the Cotton State as being——

Q. Was what?

A. The damage on one blade was waived by the Cotton State as being previous damage, known.

Q. How many blades are there on the Cotton State? A. Well, there's three.

Q. Are you sure?

A. No, I think there's four.

Q. All right.

A. There's three blades——

Q. There's four blades on the Cotton State. [410]

A. Four blades.

(Testimony of Roy E. Knowles.)

Q. And there were three blades damaged in this accident, weren't there?

A. I'll have to go back, but there was one blade that was broken that was not attributed to this accident. There was three blades damaged.

Q. In this accident, is that correct?

A. Yes.

Q. Then it was a four-bladed propeller, wasn't it?

A. That's right. You had testimony that I listened to that it was a three-bladed.

Q. So you were influenced by that other testimony that you listened to and you weren't giving us just your own opinion on it?

A. Only just the fact that it was a three-bladed for a minute. I knew it was a four-bladed.

Q. Yes, all right. Well, then isn't it a fact, Mr. Knowles, that this propeller struck this barge not twice but three times?

A. That's right. It must have gone through there somewhere.

Q. And it just doesn't show on the picture, does it?

A. No, it would be in this jumble of timber.

Q. Yes. It's kind of difficult then for you to segregate the damage between the number of times that the propeller struck that barge, isn't it? [411]

A. Well, it would—you couldn't say positively, apparently.

Q. There's not much left to your statement that there's thirty per cent more when it was hit the

(Testimony of Roy E. Knowles.)

second time by the propeller because you now admit that it was hit three times by the propeller?

A. Yes, I was assuming that this original damage was the one that only has three planks damaged.

Q. Yes. So that means that your prior estimate of thirty per cent is incorrect, isn't that correct?

A. Well, there are two distinct cuts here in this barge, I would say.

Q. Yes.

A. One of them, the top one, the larger one, would apparently be approximately thirty per cent more to repair it than if it had only been touched here on the smaller one.

Mr. Howard: That's all I have.

Mr. Crutcher: I have no questions.

The Court: Step down. Call the next witness.

Mr. Crutcher: Oh, I beg your pardon, your Honor. Before the witness leaves the stand I would like to have the picture admitted in evidence.

The Court: Any objection? Any objection to A-1?

Mr. Howard: No objection, your Honor. [412]

The Court: Admitted.

(Respondents' Exhibit No. A-1 for identification was admitted in evidence.)

The Court: You may step down.

(Witness excused.)

Mr. Biele: Mr. Stuchell.

Mr. Crutcher: Your Honor, before this examination begins may I ask that Mr. Knowles be excused?

The Court: Any objection?

Mr. Howard: I would like to ask if Mr. Knowles is going to be available in the Seattle-Monroe area here until next Monday or Tuesday.

Mr. Knowles: Yes, I will be.

Mr. Howard: Then I have no objection, your Honor.

The Court: You may be excused from appearing so far as your past subpoena or arrangement is concerned and go on about your business. Proceed.

HARRY WILLIAM STUCHELL

called as a witness in behalf of respondents, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Biele:

Q. Mr. Stuchell, will you state your full name?

A. Harry William Stuchell.

The Court: S-t-u-c-h-e- what?

A. l-l.

Q. (By Mr. Biele): Where do you live, Mr. Stuchell?

A. 902 Rucker, Everett, Washington.

Q. What is your occupation?

A. I'm a partner in the Eclipse Lumber Company.

(Testimony of Harry William Stuchell.)

Q. Who are the other partners in the Eclipse Lumber Company?

A. My father and Mr. William Carpenter.

Q. Do you have a job with Eclipse Lumber Company aside from the proprietary interest in the concern?

A. Yes, assistant manager.

The Court: Will you name the partners, please? Yourself and who else?

A. My father, E. W. Stuchell.

The Court: And who else?

A. W. D. Carpenter.

The Court: I did not get the last.

A. Carpenter.

The Court: Is that all the partners?

A. Well, there are three partners in Seattle.

The Court: You may proceed.

Q. (By Mr. Biele): Who are the partners in Seattle, Mr. Stuchell?

A. M. A. Wyman, M. H. Wyman and David E. Wyman. [414]

Q. What do you do for Eclipse Lumber Company?

A. I'm the assistant manager. I look after the operation of the plant.

Q. Do you look after the employment of the people employed by the company?

A. Indirectly now.

Q. What was your position on January 10, 1957?

A. I was superintendent of the plant.

Q. Is the Eclipse Lumber Company the owner of the scows Eclipse No. 25 and No. 15?

(Testimony of Harry William Stuchell.)

A. Yes.

Q. How long has the company owned those scows?

Q. Quite a number of years. I don't know off-hand.

Q. Do you recall an incident on January 10th of 1957, when the scow Eclipse 15 was damaged?

A. Yes.

Q. How did that incident come to your attention?

A. I was called at approximately 7:00 o'clock by Mr. Wallace.

Q. And where were you when you were called?

A. At home.

Q. And what did Mr. Wallace tell you, if anything?

A. He told me that one of the scows had been sunk alongside the ship.

Q. Who was Mr. Wallace that you testified to?

A. He is one of the managers of The Pacific Tow Boat Company. [415]

Q. Now, did you do anything in response to that telephone call?

A. I called my father and we went down to the ship together.

Q. What ship did you go down to?

A. The Cotton State.

Q. Where was the Cotton State?

A. At Pier 1.

Q. And what time did you get to the Cotton State?

A. About a quarter after 7:00.

(Testimony of Harry William Stuchell.)

Q. When you got to the Cotton State did you observe anybody employed by Eclipse Lumber Company aboard the ship? A. No.

Q. Do you know if anybody from the Eclipse Lumber Company had been aboard the ship prior to that?

A. Nobody; none that I know of.

Q. Did anybody aside from you and your father go aboard the Cotton State on that night?

A. Not aside from Mr. Wallace.

Q. Mr. Wallace is employed by Pacific Tow Boat Company——

The Court: Ask him, do not tell him.

A. Yes.

The Court: Some day in something important to you you may run the risk of thinking you may have the testimony of a witness in the record on something and all you will have in the record is an assertion by you, [416] and you are not under oath. You should try to break yourself of that habit.

Mr. Biele: Thank you, your Honor.

The Court: Proceed.

Q. (By Mr. Biele): Mr. Stuchell, have you checked the employment records of the Eclipse Lumber Company for the 10th of January, 1957?

A. Yes.

Q. Did you find in those records any indication that anyone from your company had been employed aboard the Cotton State on the night of January 10th?

A. No.

Mr. Biele: That's all I have, your Honor.

The Court: You may inquire.

(Testimony of Harry William Stuchell.)

Cross-Examination

By Mr. Howard:

Q. What is your age, Mr. Stuchell?

A. Thirty-four.

Q. How many people do you have in the employ of the Eclipse Lumber Company?

A. It varies from 175 to 200.

Q. Do you maintain a record of where all those people are at any particular time?

A. How do you mean? [417]

Q. Well, do you maintain a record of where each person is working at a particular date and hour?

A. No.

Mr. Howard: That's all.

The Court: Step down.

Mr. Biele: May the witness be excused, your Honor?

The Court: Any objection?

Mr. Howard: No objection.

The Court: You are excused, Mr. Stuchell, and may return to your work if you wish.

(Witness excused.)

Mr. Biele: Captain Keezer.

LEONARD KEEZER

called as a witness in behalf of respondents, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Biele:

Q. Mr. Keezer, will you state your name?

A. Leonard Keezer.

The Court: How do you spell the last name?

A. K-e-e-z-e-r.

Q. (By Mr. Biele): Mr. Keezer, where do you live?

A. I live at 6023 Dexter, Everett. [418]

Q. How old are you? A. Forty-six.

Q. Are you married? A. Yes.

Q. Mr. Keezer, what is your occupation?

A. I'm captain on a towboat for Pacific Tow Boat Company.

Q. What towboat are you captain of?

A. The tug Lea Moe.

Q. How long have you been captain of the tug Lea Moe?

A. Oh, eight or nine years anyway.

Q. What experience have you had prior to that time as captain of the Lea Moe?

A. I've worked with the company about fifteen years steady.

Q. In what capacity did you work before you went on the Lea Moe?

A. I was captain on the tug Sea Horse and the tug Sea Imp.

(Testimony of Leonard Keezer.)

Q. And where were those tugs employed?

A. In Everett harbor and Snohomish River.

Q. Where has the tug Lea Moe been generally employed since you have been captain these last few years?

A. All river and harbor there in Everett.

Q. Captain Keezer, what kind of a tug is the Lea Moe? A. It's a 61-foot diesel tug.

Q. And what is her normal complement when working in and around Everett harbor? [419]

A. Three men.

Q. What kind of——

The Court: Does that include the captain?

A. Yes, it does.

Q. (By Mr. Biele): And what kind of engine controls do you have on the tug Lea Moe?

A. I didn't understand that.

Q. What kind of engine controls do you have on the tug?

A. You have the engine controls from the wheelhouse. It's a direct reversing engine, they call it.

The Court: Direct——

A. Direct reversing, your Honor.

Q. (By Mr. Biele): Is it necessary to have an engineer on the tug? A. No, sir, it isn't.

Q. What kind of employment generally has the tug been used for since you've been captain?

A. It is used for the towing of logs and lumber barges mostly.

(Testimony of Leonard Keezer.)

The Court: That is what the Lea Moe is used for principally?

A. The towing of logs and barges, your Honor.

Q. (By Mr. Biele): Where have those lumber barges been towed?

A. Mostly in and out of the river.

The Court: The Eclipse is located on the [420] river away from the——

A. Yes, it is, your Honor.

The Court: Near what is referred to as Old Everett, is it not?

A. Yes, it is, your Honor.

The Court: You may proceed.

Q. (By Mr. Biele): Captain Keezer, were you the master of the Lea Moe on January 10, 1957?

A. Yes, sir. I was.

Q. Who was with you on the tug at that time?

A. Two men, Larry Hafey and John Anderson.

Q. And what were their jobs on the tug?

A. They were deck hands on the tug.

The Court: How do you spell Hafey?

A. H-a-f-e-y, your Honor.

The Court: You may proceed.

Q. (By Mr. Biele): Had Mr. Hafey served with you before that occasion?

A. Yes, about a year.

Q. Had you observed his performance of duties? A. Yes. I had.

Q. What can you state as to the manner in which he performed his duties?

A. Well, I considered him a very capable man.

(Testimony of Leonard Keezer.)

Q. Now, who was the second man that was on the tug. [421] A. John Anderson.

Q. And his job was?

A. His job was deck hand also.

Q. Had he served with you before the 10th of January? A. At least several months.

Q. And how had he performed his duties?

A. He was a capable man also.

Q. Captain, did you have the job of shifting the scows Eclipse No. 15 and Eclipse No. 25 to the Cotton State on that date? A. Yes, I did.

Q. Will you describe to the Court what cargo, if any, was aboard the scows 15 and 25?

A. They were both loaded with lumber.

Q. How much of the deck area was covered with lumber?

A. Oh, I would judge it would be—you mean the area of the scow?

Q. Well, how far out to the side did the lumber go?

A. You have about twenty inches along the side of the scows and you have several feet on each end where there isn't any lumber.

The Court: What is that for, that space?

A. That is for walking and mooring and to be able to work around on the ends of the scows.

Q. (By Mr. Biele): Captain, do you recall the arrival of [422] the Cotton State at Everett?

A. Yes, I do.

Q. About what time did she arrive?

(Testimony of Leonard Keezer.)

A. She arrived pretty close to 6:00 o'clock; 1800 that would be.

Q. Did you make any offer of assistance to help the Cotton State into the berth when she arrived?

A. We run over there but he evidently didn't need any assistance, so we went back to get our scows to be ready when he was tied up.

Q. Did the berthing of the Cotton State appear to you to be satisfactory and expeditious?

A. Yes, it did.

Q. Now, Captain, where did you go then to get the scows?

A. We went to what we call West Cove, which is a thousand feet or less from where the ship docked.

Q. When you went to West Cove were the scows made up in a tow?

A. Yes, they were.

Q. How were they made up, Captain?

A. We had previously close-coupled them so that they were fitted tight together and the coupling lines between them were as tight as we could get them by hand.

Q. What do you mean by "close-coupled"?

A. That means the two ends of the scows were right together [423] and the lines were as short and as tight as we could get them by hand.

Q. How many lines were led between the two scows?

A. There was one—there was the two lines.

Q. Where were the lines placed?

(Testimony of Leonard Keezer.)

A. On the stanchions on each side, on each corner where they butted up against each other.

Q. What kind of lines were those, Captain, that you used?

A. Oh, they were five, about five-inch Manila, something in that neighborhood.

Q. Captain, was there a purpose in making up the scows close coupled in the manner you have described?

A. Yes; there was.

Q. What was that purpose?

A. The purpose was to make the two scows as one unit so that they would be better to handle in coming alongside of the ship.

Q. Did the manner in which the scows were made up keep the scows from kinking or wobbling?

A. Yes, it did. That was our purpose in close coupling, to make them as one unit, to make them as one barge.

Q. Would the close coupling keep the scows straight in line as you towed them?

A. Yes; it did.

The Court: That is to say, your towing [424] line closely coupled, is that what you mean, or do you mean some tied lines between the two barges?

A. It's the tieline between the two barges, your Honor, tying them tight together.

Q. (By Mr. Biele): Captain, how much clearance, if any, was there between the two scows after you had finished close coupling them?

A. Very little. About all you would get is what little stretch you'd get out of the lines.

(Testimony of Leonard Keezer.)

Q. Would you care to indicate to the Court what that clearance might have been?

A. Well, I would say not over two feet.

Q. Captain, did you take the two scows in tow thereafter? A. Yes; I did.

Q. How did you take them in tow?

A. By a short Manila line to the tow bitts of the tug.

Q. Where was that line fastened to the scows?

A. To the starboard stanchion on the lead scow.

Q. And how long was that line that you used as the towing line?

A. That line was long enough just so to give the stern of the tug clearance from brushing against the scow as you turned.

Q. That towing line was not the line that close coupled the scows, was it? [425]

A. No, sir; that was a line from the barge to the tug.

Q. Captain Keezer, which scow was towed first as you started out?

A. Eclipse No. 25 was towed as the bow.

Q. And which was the stern?

A. Eclipse No. 15 was behind.

Q. Had you received any orders as to which scow was to go to which hatch before you started out?

A. According to my orders the scows were to go one to number one hatch and one to number four hatch, but there was no distinction as to numbers.

(Testimony of Leonard Keezer.)

Q. Captain, could you have taken the No. 25 in tow first without any difficulty?

A. I don't understand that.

Q. Could you have taken No. 25 in tow first?

Mr. Howard: I object to that because the witness has testified he did do that, take 25 first.

Mr. Biele: I misspoke myself. I meant No. 15.

Q. (By Mr. Biele): Could you have taken No. 15 first?

A. Yes; I could have. It just happened that they were—as long as it didn't make any difference and they were facing that way, I took 25 ahead.

The Court: What kind of lumber or timbers were on these barges, particularly E-15?

A. Your Honor, they were assorted [426] timbers, about four to six inches thick and maybe ten inches the other dimension, and I suppose twenty feet long.

The Court: There were no squares there, were there?

A. No; there was none what we call Jap squares, your Honor.

The Court: Squares is what I mean to say.

A. Yes.

The Court: You may proceed.

Q. (By Mr. Biele): Captain, was it possible for you to proceed directly from West Cove to the place where the Cotton State was berthed?

A. Well, it was possible to proceed directly, yes, except that I swung a little wide when approaching the ship to come in at the proper angle.

(Testimony of Leonard Keezer.)

Q. Now, where was it that you swung wide to make the approach at the Proper angle to the ship?

A. Four or five hundred feet off the ship, off the stern of the ship.

Q. Did you then approach the slip where the Cotton State was berthed?

A. Yes; I did.

Q. As you approached the stern of the Cotton State, will you state how the scows were towing?

A. The scows were handling very well and I had no difficulty [427] with them at all.

Q. Did you encounter any unusual currents?

A. I didn't experience any current at all.

Q. Did you anticipate any current?

A. It was low water and it should have been slack water at that time if there was any.

The Court: Slack; you mean no current, do you?

A. No; no current, that's right, your Honor.

The Court: You said it was supposed to be. Was it in fact that kind of water?

A. No; there was nothing there to affect it at all, your Honor.

The Court: There is not very much salt water that gets up there, is there, or is there?

A. Yes, your Honor, it is salt water, although the river comes out quite close there.

The Court: Does the flow of the tide affect the movement or action of the water there at that place where the Cotton State was moored? Does it do that normally or ordinarily, or——

(Testimony of Leonard Keezer.)

A. There is very little current by there anyway even at any stage of the tide, your Honor.

The Court: You may inquire.

Q. (By Mr. Biele): Was the lack of current that you encountered what you anticipated? [428]

A. Yes; it was.

Q. Captain Keezer, as you approached or were abeam of the Cotton State's stern, did you pass off that part of the ship?

A. Did I pass where?

Q. Did you pass the Cotton State's stern?

A. I passed the stern of the Cotton State I suppose about sixty or seventy feet off.

Q. And what side of the Cotton State did you pass off?

A. That would be the starboard side.

Q. As you passed the stern of the Cotton State did you see any warning signs on the stern of the vessel?

A. No; I didn't.

Q. Did you see a red blinking light on the stern of the Cotton State?

A. I absolutely did not see any red blinking light.

Q. If such a light had been posted do you think you would have seen it?

A. I surely would have seen a red blinking light, yes.

The Court: How long have you been towing lumber barges at and about that mill while lumber carriers, ocean carriers of lumber, were moored there for the purpose of loading lumber possibly?

(Testimony of Leonard Keezer.)

A. I have been putting scows alongside of ships, your Honor, for about fifteen years anyway. [429]

The Court: Did you or did you not know where to expect the location of propellers on ships to be, with or without a light indicating it?

A. I had planned to go clear forward so as to stay away from it anyway.

Mr. Howard: I move to strike that answer as not responsive.

The Court: The Court will have to strike it. I would like you to state whether or not your experience was such that you needed to have a light in fact in order to be aware of the fact as to the location of the rudder on a ship.

A. Your Honor, I stated that I was sixty or seventy feet off, and that was my reason for being that far off, so that—I didn't want to take any chances, I wanted to stay clear.

The Court: Were you aware of the location of the rudder on that ship when you were drawing those barges alongside?

A. Yes; I was, your Honor.

The Court: You may proceed.

Q. (By Mr. Biele): Captain, did you have any trouble in seeing the Cotton State on that occasion?

A. No; I didn't. The visibility was good, I would say.

Q. Now, Captain, as you proceeded past the stern of the [430] Cotton State, where were the deck hands that you had with you, Mr. Hafey and

(Testimony of Leonard Keezer.)

Mr. Anderson? A. They were on deck.

Q. Did there come a time that Mr. Hafey went aboard one of the scows?

A. When we were practically—really when he went aboard the scow was after he heard the shouting from this man on the ship, and we wanted to find out what he wanted.

Q. Now, you said you heard shouting from a man on the ship. Where did you hear this?

A. He was on the stern of the ship when we first went by and he started shouting at us.

Q. Was that as the *Lea Moe* was fifty to sixty feet off the stern of the *Cotton State*?

A. Yes; it was.

Mr. Howard: Sixty to seventy feet off?

The Witness: Sixty to seventy.

Mr. Biele: Sixty to seventy. I misspoke myself.

Q. (By Mr. Biele): Were you able to understand what this gentleman was shouting about?

A. No; I wasn't.

The Court: Try to keep your voice raised clear and distinct, Mr. Biele. Sometimes it is sort of subdued.

Q. (By Mr. Biele): Captain, as you entered the slip and passed the stern of the *Cotton State*, what was your [431] intention with regard to the landing of the scows?

A. I had intended to go clear forward to number one hatch with both scows, make the one fast and then drop the other one back to number four hatch later.

(Testimony of Leonard Keezer.)

Q. Was that your original plan when you had started out from West Cove?

A. Yes; it was.

Q. Did you receive any change in orders regarding the manner or way in which the scows were to be spotted?

A. The man on the ship told us that he wanted the lead scow at number four hatch.

Q. That was the number——

A. That was the No. 25.

Q. 25.

A. And the trailing scow around up to number one hatch.

Q. That was a reversal of what you had intended, was it not? A. Yes; it was.

Mr. Howard: I object to that as leading, your Honor.

The Court: The objection is sustained. That is not necessary. This man is such an experienced navigator.

Q. (By Mr. Biele): Captain Keezer, did you recognize this person that gave the orders as anybody from Pacific Tow Boat Company? [432]

A. No; I knew that it was nobody from Pacific Tow Boat Company.

Q. Did you recognize——

The Court: Please, for my convenience, read that question and answer, Mr. Reporter.

(The reporter read the last question and answer.)

(Testimony of Leonard Keezer.)

Q. (By Mr. Biele): Did you recognize this gentleman as anybody that you had dealt with from the Eclipse Lumber Company?

A. Nobody that I would know from Eclipse Lumber Company, no.

Q. Did you recognize this person as anyone you could identify? A. No; I didn't.

Q. Captain, what orders did you receive from this person that you mentioned?

A. He put the line down at the forward part of the midship house and indicated he wanted the scows tied there, and so we proceeded with that.

Q. Did you land the scows at the forward part of the midship house? A. We did.

Q. Where was that in relation to where you had originally intended to land the scows

A. That was probably two hundred feet farther aft than I had intended to stop. [433]

Q. If you had not received those orders would you have gone forward to number one hatch

A. I certainly would, yes.

Q. Captain, what kind of a landing did you make in bringing the scows alongside the forward end of the house?

A. I considered it a good landing and a very normal landing.

Q. What part of the scow or scows was it that you brought alongside the forward end of the house?

A. That was the forward end of the leading scow.

(Testimony of Leonard Keezer.)

Q. And that would be the No. 25?

A. 25, yes, sir.

Q. When the landing was made, Captain Keezer, where was Mr. Hafey?

A. Mr. Hafey was on the bow or the head end of the leading scow over next to the ship.

Q. When had he gone on the leading scow?

A. He went from the stern of the tug onto the scow shortly after the man started shouting from the ship in order to find out what he wanted.

Q. Where was Mr. Anderson at the time the forward scow was brought alongside the forward side of the house?

A. He stayed on the stern of the tug to handle the lines.

Q. And what did you do at that time?

A. I brought the scow up and braked the headway on it and then held it in position until they could get the line [434] secured from the ship.

The Court: The captain will have to come back later anyway. I think we will have to conclude. That terminates today's proceedings at this point, Captain. You may step down. I wish I could say that we might start this at some time Monday. I cannot say so, but I want to very badly. Those connected with this case are excused until Tuesday morning, that is December 2nd, at 10:00 o'clock.

I do not know when I ever said anything like this in my service as a trial judge, but if I ever saw a lawsuit that at this stage of it would be an ideal one for settlement, this one is. I realize I

(Testimony of Leonard Keezer.)

have not heard any great amount of the respondents' testimony, but I have heard a lot of the cross-examination. I have read these briefs and the record very carefully, and in the light of the briefs and the record and the pretrial and the various contentions and what we have heard up to now I cannot restrain myself from making the statement I have just made.

Those connected with the case may now retire until next Tuesday morning at 10:00 o'clock.

(Thereupon, at 4:50 o'clock p.m., a recess herein was taken until 10:00 o'clock a.m., Tuesday, December 2, 1958.) [435]

December 2, 1958—10:00 o'Clock A.M.

(All parties present as before.)

The Court: You may resume the proceedings in the case now on trial.

Mr. Biele: Your Honor, we would like to file another memorandum in this matter.

The Court: Do you think there is involved in it any case which involves facts which are among other material facts that the lines from the moored vessel had been passed to and had already been affixed to, tied to the moving vessel, and that thereafter and not before the accident happened? Do you have any such?

Mr. Biele: Your Honor, in my original brief I cited the case of the West Indian-Eureka, I think

it is. That case is a case where the lines were attached to the ship.

The Court: West Indian what?

Mr. Biele: Eureka. It's in my original memorandum, your Honor, and that is one case where the ship was condemned for not having a lookout and acting when the lines were attached from the ship to the scow.

The Court: Do you have another one?

Mr. Biele: I think also, your Honor, the Nounes case which I have in my original memorandum is [436] a case of that type where there were lines from the ship.

The Court: Will you spell the name, please? I want to be sure.

Mr. Biele: J. L. Nounes. It's N-o-u-n-e-s, your Honor.

The Court: N-o-u-n-a-s?

Mr. Biele: It's J. L. Nounes, N-o-u-n-e-s, versus the United States of America.

The Court: It is e-s instead of a-s, is that right?

Mr. Biele: e-s, your Honor, yes.

The Court: Is there another one that you claim involves those facts among others?

Mr. Biele: And I think the Seas Shipping case is one, your Honor, where the lines were attached, and that's 92 Federal Supplement 902. I'm sure in the first two cases the lines were attached to the ship, your Honor, when the accident happened.

The Court: Do you know of any in the Ninth Circuit?

Mr. Biele: No, your Honor, I haven't come upon

any. This seems to be a sort of a situation that is more litigated in the East than it is in the West.

The Court: Yes; I noticed that. One of the cases not reported in the West reporting system but in [437] the A. M. C. is that 1935 case of the Maryland judge. I cannot quite call his name. Is it Chester?

Mr. Howard: Hektor.

The Court: No; Hektor is the name of the case.

Mr. Crutcher: Chestnut.

The Court: The judge who decided it, Judge Chestnut, that is the judge. Judge Chestnut was an admiralty judge of some considerable note and his opinions rate well in the admiralty law, but like most other judges they are not the only ones to consider.

Mr. Biele: I consider that Counsel conceded that that case was not applicable to this matter, your Honor, the other day.

The Court: On what distinguishing fact do you understand?

Mr. Biele: I'm just trying to remember now, but I——

The Court: It was employees of——

Mr. Biele: It was employees of the stevedore that did it, yes, your Honor.

The Court: The persons who were causing the action that resulted in the collision were employees of those other than the moving vessel.

Mr. Biele: Yes, your Honor.

The Court: They were not actually [438] em-

employed by the moving vessel, they were employed to do work as longshoremen, as I recall.

Mr. Biele: That's right; the control was not in the ship at the time.

The Court: You may proceed.

Mr. Biele: Captain Keezer, will you resume the stand?

The Court: Counsel I hope are advised on both sides the Court has a strong question mark, a very deep query as to whether or not that point is not one of the most——

Mr. Howard: I beg your pardon, your Honor, I didn't hear that last.

The Court: The Court has a very strong question mark in mind as to whether or not that question of who put out the lines and when they were put out from the moored vessel to the moving vessel before the accident, first, were they put out effectively before the accident; thereafter who was moving and what happened to move the moving ship into the point of collision. You may proceed.

LEONARD KEEZER

resumed the stand.

Direct Examination

(Continued)

Mr. Biele: Will the clerk mark this?

The Clerk: It will be Respondents' Exhibit No. A-2. [439]

(A U. S. Coast & Geodetic Survey chart was marked Respondents' Exhibit No. A-2 for identification.)

(Testimony of Leonard Keezer.)

The Court: If I were making a chart of that part of the Snohomish River, I think one of the objects that I would note on the chart would be the location of the Eclipse lumber mill. The mill probably has been there as long as any other mill now operating in Everett and it has probably been one of the biggest economic units in the community, and it is a strange thing to me it would not be indicated on that map. It may be there, but I did not see it. What do you call this thing you have had marked as Respondents' Exhibit A-2, Mr. Biele?

Mr. Biele: Your Honor, this is United States Coast and Geodetic Survey Chart No. 6448.

The Court: 64—

Mr. Biele: 48.

The Court: You may proceed.

Mr. Biele: Which is an official chart of the Everett harbor and approaches.

Q. (By Mr. Biele): Captain, will you tell us if you recognize what you have in front of you as Respondents' Exhibit No. A-2?

A. Yes; I do.

Q. Will you tell the Court what that is? [440]

A. It's a chart of Everett harbor and part of the Snohomish River.

Mr. Biele: We move the admission of this exhibit, your Honor.

The Court: Mr. Keezer, does it or does it not include a portrayal of the ground and water locations at or about the place where the Eclipse mill is located?

(Testimony of Leonard Keezer.)

A. Yes; it does, your Honor, but it's not marked. I don't—I can't see where it's marked.

The Court: Is there any objection to receiving this in evidence?

Mr. Howard: No objection, your Honor.

The Court: It is admitted.

(Respondents' Exhibit No. A-2 for identification was admitted in evidence.)

Q. (By Mr. Biele): Mr. Keezer, will you take this pencil and mark on the chart where the Eclipse mill is?

The Court: If you know.

Q. (By Mr. Biele): If you know.

The Court: Be sure to be accurate, Captain, if it is possible for you to be, and if you cannot be, let Counsel and the Court know.

(Witness marks on Respondents' Exhibit No. A-2.)

Q. (By Mr. Biele): Captain, will you describe what you have [441] just marked on the chart?

A. I marked the location of the Eclipse Lumber Company in Everett.

Q. Would you put your initials in that area that you have just marked?

(Witness marks on exhibit.)

Q. Now, Captain, can you show the Court on that chart where the Port Dock in Everett is?

A. Yes; I can.

(Testimony of Leonard Keezer.)

Q. Will you mark on that chart where the Port Dock was and label it as such?

(Witness marks on exhibit.)

Q. Can you show on that chart where it was on the night of January 10, 1957, where it was that you picked up the scows Eclipse 15 and 25?

(Witness marks on exhibit.)

Q. What do you call that area, Captain?

A. We call it West Cove.

Q. Would you mark on the chart——

The Court: May I interrupt you?

Mr. Biele: Yes, your Honor.

The Court: What pier of the Port of Everett did you mark after marking the location of the Eclipse mill?

A. It is Pier No. 1, your Honor. They [442] call it also the Port Dock.

The Court: Port of Everett Pier No. 1, is that right?

A. Yes, your Honor.

The Court: Then this last question, may I have that read, Mr. Reporter?

(The reporter read Mr. Biele's question and the answer as follows:

("Q. What do you call that area, Captain?

("A. We call it West Cove.")

The Court: What area, Captain Keezer, were you referring to in your last answer? What area

(Testimony of Leonard Keezer.)

is that? Use words to describe its location. Where is it with reference to the location of the Eclipse mill and Everett Port Pier No. 1?

A. Your Honor, it's about a thousand feet from Pier 1.

The Court: Which way, upriver or downriver?

A. It's pretty near north.

The Court: I do not have in this instance the cardinal directions. Is it upriver or downriver?

A. It's not in the river at all, your Honor. It's formed by the naval shipyard there and there's this body of water inside that fill that forms the shipyard.

The Court: How far is it from Highway 99 and [443] the bridge on Highway 99 where it crosses the Snohomish River?

A. It would be between two and three miles from there.

The Court: Which way, upstream or downstream?

A. Upstream.

The Court: Is it farther upstream than the location of the Eclipse mill?

A. No, your Honor. This West Cove we refer to is right in Everett harbor, right close thereby.

The Court: I do not understand its location. I would like him to locate it with reference to the course of that river, the Snohomish River, as it makes the course on the ground or between its banks between the Eclipse mill and the bridge on Highway 99.

(Testimony of Leonard Keezer.)

Q. (By Mr. Biele): Captain Keezer, is the West Cove on the Snohomish River?

A. No; it isn't.

Q. Is it anywheres near Highway 99?

A. No; it isn't.

Q. Do you think you could show his Honor where Highway——

The Court: I am not interested in it if it is not—you can wholly disregard the Court's inquiry and suggestion. I thought we were talking about places that were pertinent to this accident which occurred, as [444] I understand it, at or about the premises of the Eclipse mill at Pier 1, but if it occurred out in the open Puget Sound or Everett harbor around on the face of the northerly land-fall of Everett harbor, then this question is of no interest and you may wholly disregard it.

Mr. Biele: Thank you, your Honor.

Q. (By Mr. Biele): Captain, have you marked on the chart where the West Cove is?

A. I have marked a dotted line from where I took the scows in West Cove over to Pier 1.

Q. Would you——

The Court: Who brought them to West Cove, do you know?

A. Your Honor, I don't remember what boats brought them out of the river, but I——

The Court: West Cove was a storage ground, that is what it was, for these barges, was it not, these scows?

A. Yes, your Honor.

(Testimony of Leonard Keezer.)

The Court: How far is it from that place to the river wharves of the Eclipse Lumber Company, if you know?

A. Approximately seven miles, your Honor.

The Court: Then the location of the Eclipse mill and the location of this accident and the pier at [445] which the moored vessel was tied up have no relationship whatsoever in the action of the water or in the events connected with this accident; is that true or not?

A. It's true, yes. I don't see where it would have anything to do with it, your Honor.

The Court: Then you may wholly disregard once and for all the Court's formerly manifested interest in the location of the Eclipse mill.

Q. (By Mr. Biele): Captain, would you just label the area that you have described as West Cove now?

A. Label, write "West Cove" in here?

Q. Yes.

(Witness writes on Exhibit A-2.)

Q. Captain, was it at West Cove that you picked up the scows on this night?

A. Yes; it was.

Q. And was the Cotton State at the Port Dock in Everett at this time?

A. Yes; it was.

Q. Now, Captain, as we finished the other day I was asking you about the bringing alongside of the scows. Captain, where did you bring the two

(Testimony of Leonard Keezer.)

scows alongside with reference to the starboard side of the Cotton State?

A. Just under the forward part of the bridge was where we stopped them and held them. [446]

Q. And what——

The Court: Which barges or scows were abreast of the bridge, if either was?

A. The forward scow, which was Eclipse No. 25, the front end of it, the bow end of it.

Q. (By Mr. Biele): Will you state where the forward end of the No. 25 was with reference to the forward end or to the house on the Cotton State?

A. It was under the forward part of the bridge, the midship house.

Q. Captain, what kind of a landing was it that you made in bringing these scows alongside?

Mr. Howard: Objected to as repetitious.

The Court: Do you recall having asked this question of this witness prior to the present time?

Mr. Biele: No, your Honor.

The Court: Are you sure——

Mr. Howard: That very question was asked, your Honor. I have a transcript of the testimony here.

The Court: Read it, please.

Mr. Howard: Beg your pardon?

The Court: Read the question.

Mr. Biele: If it has been asked I will withdraw it, your Honor.

(Testimony of Leonard Keezer.)

The Court: Wait just a moment. We want [447] to find out.

(Brief pause—Mr. Howard searching transcript.)

The Court: I guess we will have to proceed. The question is withdrawn. Ask him another one.

Q. (By Mr. Biele): Captain, when the No. 25 was brought alongside the Cotton State, what was done, if anything, to keep the scows, the ships, from damaging each other?

A. Oh, we generally——

The Court: No, this time.

Mr. Howard: I move to strike.

The Court: This time.

A. Mr. Hafey put a piece of scrap lumber between the corner of the scow and the side of the ship, merely to keep it from scraping up their paint a little.

The Court: Did you get any impression as to what size or dimensions of that piece of scrap——

A. Oh, they're generally two by fours or two——

The Court: I wish you would not say "generally." I want to know in this instance, and if you do not know in this instance do not attempt to say so.

A. Your Honor, I think it was a two by four.

Q. (By Mr. Biele): Captain, do you know what happened to that scrap lumber? [448]

(Testimony of Leonard Keezer.)

A. It dropped into the water, I guess, after it served its purpose.

Q. Was there any damage done to the Cotton State when you brought the scow alongside?

A. No; there wasn't.

Q. Was there any paint scratched on the Cotton State? A. No; there wasn't.

Q. Captain, after you brought the scows alongside, will you state to the Court what occurred next?

A. I held the scows in position waiting to secure a line from the ship to the scow.

Q. How did you hold the scows in position?

A. By pulling dead slow and holding them in against the ship.

Q. And why was that necessary?

A. Because there was a light wind blowing aft.

Q. Did you have any occasion to push the scows back aft?

A. I didn't need to push the scows at any time, and I didn't.

The Court: Just say yes or no.

A. No, your Honor.

The Court: You should not make the other comment. Counsel has a reason for putting the question in the form he did. He may later want to ask you a question that would call for the answer you gave, but try to have in mind first to answer Counsel, then if Counsel wishes further information, he will ask you. [449]

(Testimony of Leonard Keezer.)

Q. (By Mr. Biele): Captain, was the scow secured to the Cotton State?

A. At what time?

Q. After you brought it alongside.

A. Yes; it was.

Q. And how was that done?

A. They passed a line down from the ship and it was made fast to the stanchion of the scow.

Q. What stanchion of the scow was that made fast to?

A. That would be the outboard, the starboard one on No. 25.

The Court: Which scow, the leading scow?

A. The leading scow.

Q. (By Mr. Biele): Was that the same stanchion that your towline was attached to?

A. Yes; it was.

Q. Captain, did you recognize anybody that was on deck of the Cotton State at this time?

A. No; I didn't.

Q. Were you able to see who was handling the line on the Cotton State?

A. No; I didn't—I couldn't say.

Q. Do you recall the gentleman that gave orders to you to spot the scows?

A. The man was either handling lines himself or he was right there. [450]

The Court: That is not the question that is before you at all. Strike the answer. You may invite his attention to the form of your question if you wish to, Counsel.

(Testimony of Leonard Keezer.)

Q. (By Mr. Biele): Captain, was the man that directed you to spot the scows present while the scows were—while the line was being secured?

A. Yes; he was as far as I know. Is that all right, your Honor?

The Court: You may ask him another question.

Q. (By Mr. Biele): Did you receive any protest from anyone on the Cotton State as to the manner in which the scow was being tied up?

A. No.

Q. Captain, how was the wind blowing at this time?

A. The wind was blowing generally aft.

The Court: What do you mean by that? Was it blowing in the direction from the forepeak towards the after end of the vessel or was the contrary true?

A. It was blowing from the forward end of the vessel towards the after end of the vessel, your Honor.

The Court: Is that the kind of wind you previously mentioned a stern breeze was blowing, a light stern breeze was blowing?

A. Yes, your Honor. [451]

The Court: You may proceed.

Q. (By Mr. Biele): Captain, how did that strike the scows?

A. Well, it would strike them on the forward scow.

Q. And which way would that move the scow?

A. It would move the scows aft on the ship.

(Testimony of Leonard Keezer.)

Q. Captain, was it possible to hold the scows against that wind? A. Yes; it was.

Q. Did you hold those scows against that wind?

A. Yes; I did.

Q. Now, Captain——

The Court: By what force or power did you do that, if any such was applied?

A. I worked very slowly ahead with the tug, your Honor.

The Court: With the tug?

A. I still had my towline out on the scow.

The Court: What about the tug's engines; were they then in operation, and, if so, what, if you know, was furnishing the force by which you moved in the manner that you have just described?

A. I just worked the tug's engines very slowly, enough to hold them in position, your Honor.

Q. (By Mr. Biele): Captain, in what direction did you work the tug to hold them in [452] position? A. Ahead and in towards the ship.

Q. Now, Captain, while this line was being secured, where was Mr. Hafey?

The Court: If you know.

A. He was securing the line on the scow. On the scow.

Q. (By Mr. Biele): Can you tell the Court where Mr. Anderson was?

A. He stayed on the after deck of the tug.

Q. Captain, were you satisfied that the line from the ship to the scow was secured?

A. Yes; I was.

(Testimony of Leonard Keezer.)

Q. What, if anything, occurred after the line from the ship to the scow was secured?

A. After the line was secured I had Anderson let the line go from the tug. I slacked off then.

The Court: The line from the tug to what?

A. From the tug to the scow, your Honor.

The Court: Is that the towing line?

A. That's the towing line, yes, sir.

Q. (By Mr. Biele): Thereafter, Captain, what maneuver was made by the tug?

A. I worked ahead to get away from the scow a little bit and then backed out to maneuver to go back to the other tail scow.

Q. Now, in working ahead did you push in any way against [453] the scows?

A. No; I didn't.

Q. After you worked out ahead, Captain, then what did you do?

A. I backed out and maneuvered over to get back to the tail scow.

Q. Captain, when was it, if at any time, that you became aware that the after scow was in trouble?

A. When I approached where the two scows coupled together I could see a lurching of Eclipse No. 15.

Q. How long had it been since you had cast off from the forward scow, No. 25?

A. I would say three or four minutes.

Q. What did you observe with relation to the scow No. 15?

(Testimony of Leonard Keezer.)

A. I observed a lurching of the scow, a rocking motion.

Q. Did you observe whether the scows 15 and 25 were still close coupled? A. Yes. They were.

Q. When you observed this lurching had your tug touched or contacted the No. 15 in any way?

A. I observed that while I was some distance off yet.

Q. About how far were you off from the No. 15 when you made this observation of trouble?

A. I suppose twenty-five or thirty feet.

Q. Now, when you observed this trouble, had the tug contacted [454] or touched the scow No. 15?

A. No; it hadn't.

Q. When you observed this trouble, could you state whether you saw anyone back aft on the deck of the Cotton State?

A. I didn't have reason to observe anybody, or didn't.

Q. Can you state where Mr. Hafey was when this trouble was observed by you?

A. He was standing on Eclipse No. 5 right where they were coupled to No. 15, on that end of the scow.

Q. Do you mean 25, or——

A. He was on 25.

Q. Would that be the forward scow?

A. That would be the forward scow.

Q. Captain, what did you do after you saw No. 15 lurching, in trouble?

A. It was only a very short time until Hafey

(Testimony of Leonard Keezer.)

informed me that the scow was sinking, so I immediately got into position to pull that scow out of there.

Q. Did you pull the scow out?

A. Yes; I did.

Q. Will you explain to the Court how you pulled out the scow?

A. I got the tug turned around so that the stern was in towards the scow, the stern in towards the scow and the ship, and pulled it out with the same towline, the same [455] procedure as I had pulled it in there.

Q. Captain, at the time that the scow was observed by you in trouble were there lines from the No. 15 to the No. 25?

A. Yes; there were.

Q. What lines were those?

A. The coupling lines were still coupled.

Mr. Biele: Would the bailiff give this sketch, Exhibit 4, to the witness?

(The exhibit was handed to the witness.)

Q. (By Mr. Biele): Captain, do you see on that exhibit——

The Court: Is that something that the captain or some other person's freehand drawing has produced already?

Mr. Biele: That is the sketch of Captain McLaughlin, your Honor.

The Court: Is it already in evidence?

Mr. Biele: Yes, your Honor.

(Testimony of Leonard Keezer.)

The Court: You may inquire. Will you refer again to the exhibit number, please?

Mr. Biele: That is Exhibit No. 4, I think, your Honor.

The Court: Libelant's?

Mr. Biele: Libelant's Exhibit No. 4.

Q. (By Mr. Biele): Captain, do you see the dotted line with [456] the numeral 15 in that sketch?

A. Yes; I do.

Q. And do you see the dotted lines forward of the number 15 and generally off the ship on the starboard side?

A. Yes; I do.

Q. Now, Captain, do you see——

The Court: Counsel undoubtedly has in mind that the exhibit was received for the limited purpose of illustrating the testimony of the witness who was then on the stand.

Mr. Biele: I understand that, your Honor. I only have one point in this.

Q. (By Mr. Biele): Captain, do you see the distance between the after scow on that and the No. 15?

A. Yes; I do.

Q. Will you tell the Court whether that distance is correct as the situation was when you saw the No. 15 lurching in trouble?

A. No, it isn't. It shows a space here, and, as I've stated, the scows were close coupled, right together.

Q. The space between what are you referring to, Captain?

A. Between Eclipse 15 and Eclipse 25.

(Testimony of Leonard Keezer.)

The Court: Captain, where was that stanchion on the E-25 to which you said previously in your testimony the line from the Cotton State was tied? Where was [457] it located on that scow? Was it forward, aft, or to one side or the other? If so, which one of these, which one or ones of these?

A. It was forward on the outboard side, your Honor.

The Court: Outboard was on the starboard side of the scow as it was headed into this slip?

A. Yes, your Honor.

Q. (By Mr. Biele): And what scow was that, Mr. Keezer? A. That was Eclipse 25.

The Court: That was the leading scow in this towing operation, is that right?

A. Yes; it was, your Honor.

The Court: Was that or was it not a usual place to affix the moored ship's lines to the moving scow or tug as distinguished from a stanchion or place or cleat located somewhere else on that leading scow?

A. No; that is the usual place, your Honor.

The Court: Why do you put it on the offshore forward position like that? Why not put it on the inshore forward or the inshore after line tying device?

A. Your Honor, it is put on the outside so as not only to hold the scow from going——

The Court: Away from the moored ship?

A. Away from the moored ship as well as [458] inways.

(Testimony of Leonard Keezer.)

The Court: Why are you concerned as well with it going away from the moored ship to which it is moored as you are to take caution against its moving inward too close to that ship? What is it about the operation that calls for your choice made here in this instance?

A. We used the line there because it serves the double purpose of holding the scow from going endways and also holds it in tight against the ship.

The Court: You may inquire.

Q. (By Mr. Biele): Captain, when you had taken in the tug's line following the securing of the line from the scow to the ship, were the scows drifting in any way?

A. Will you repeat that, please?

The Court: Read it, Mr. Reporter.

(The reporter read the last question.)

A. I didn't note that they were, no.

Q. (By Mr. Biele): Were you satisfied that they were tied up alongside the ship?

A. I was.

Mr. Biele: May I consult with Mr. Crutcher?

The Court: You may do that.

(Brief pause.)

Q. (By Mr. Biele): Captain, how long would you estimate it [459] took from the time the Lea Moe entered the slip until you observed that the No. 15 was in trouble?

The Court: Did he not say how long? I think

(Testimony of Leonard Keezer.)

he said that, Mr. Biele. He said three or four minutes before.

Mr. Biele: Your Honor, this is an over-all time.

Q. (By Mr. Biele): How long was it from the time that you first entered the slip until you——

A. Oh, that was about eight or ten minutes.

Q. Captain, would you tell the Court what your explanation is for this damage to Scow No. 15?

A. I believe that the scow—the line on the ship was either slacked or let go, allowing the wind to drift the scows astern.

Q. And when was that accomplished, if you know?

A. It must have been after I let go my line.

Mr. Howard: I move to strike that as something not within the knowledge of the witness.

The Court: The motion is granted. It is so ordered. The statement is stricken. The Court will disregard it. The reason the Court does so is because the witness' answer was an argumentative statement and not a statement of fact.

Mr. Biele: May I confer with Mr. Crutcher a [460] minute, your Honor?

The Court: Yes.

(Brief pause.)

Mr. Biele: That's all, your Honor.

The Court: Mr. Keezer, this may have been covered in part by the Court's questions previously but I want to have your information as to whether the beginning of this trip, this towing operation, had

(Testimony of Leonard Keezer.)

any connection with the original movement of these two scows from their original loading place at the Eclipse mill.

A. Your Honor, I don't see where that would have any——

The Court: Did you move those scows from the Eclipse mill into the storage basin from which you finally took them on this final towing operation?

A. No; I didn't, your Honor.

The Court: You had nothing to do with that. So far as you know the scows may have been put in this storage basin after being towed from the mill a week before or a day before or hours before, is that right?

A. Yes; they could have been, your Honor.

The Court: And they were picked up from this storage basin where they lay awaiting whatever ship was finally to take their cargo aboard the visiting ship, is that right? [461]

A. That's correct, your Honor.

The Court: You may proceed.

Cross-Examination

By Mr. Howard:

Q. Mr. Keezer, do you hold any license issued by the United States Coast Guard as a deck officer or engineering officer?

A. No, sir; I don't.

Q. Do I understand correctly that before you undertook to move these two scows from their posi-

(Testimony of Leonard Keezer.)

tion in West Cove to the point alongside the Cotton State you first took the tug Lea Moe out without any tow and went off the Port Dock to offer or be available for any assistance to the Cotton State in docking? A. Yes; I did.

Q. And you had nothing in tow then?

A. No; I didn't.

Q. And you stood by there while the Cotton State did approach and make a landing at the dock?

A. I didn't watch while he finished his landing. I was there while he made his approach.

Q. And when did you leave, with reference to the time the vessel made a landing at the dock?

A. I left when the pilot indicated he didn't need any [462] assistance.

The Court: Do you know how many minutes it was thereafter when he effected a landing of the Cotton State against the dock? If so, state.

A. I could only guess, your Honor.

The Court: How many feet or portions of a mile or miles did you move those two scows, the E-15 and E-25, from the place in the storage ground where you picked them up and finally released them alongside the ship which you said previously was under the ship's house of the Cotton State?

A. In the neighborhood——

The Court: Over the surface of the water how far did you move those two scows?

A. In the neighborhood of one thousand feet, your Honor.

(Testimony of Leonard Keezer.)

The Court: You may inquire.

Q. (By Mr. Howard): If I understand you correctly from your testimony last Friday, you did observe that the berthing of the Cotton State at the Port Dock No. 1 was satisfactory and expeditious; is that correct?

A. I judged that because he was already tied up when I got back with the scows, and I wasn't gone very long.

Q. Now, when you returned with the scows from West Cove to a point off the face of the Port Dock No. 1 at Everett, [463] will you state whether or not the Cotton State had completed its landing and mooring at that time?

A. I could see that the lines were out.

Q. And was the mooring completed?

A. As far as I knew it was.

Q. Then you were aware at that time that the vessel had just arrived from sea and had made a landing and tied up to the dock?

A. Yes; I was.

Q. Now, where was the stern of the Cotton State with reference to the face of the dock, the outer face of the dock?

A. I remember it to be a little inshore from the face of the dock.

Q. A little inside of the face of the dock?

A. Yes.

Q. Mr. Keezer, the tug Lea Moe, will you describe to us the pilothouse, where it is located on the ship and where you would be standing on the

(Testimony of Leonard Keezer.)

deck of the pilothouse with reference to the main deck of the tug?

A. The floor of the pilothouse is about two feet above the main deck.

Q. And how far is the main deck above the water line?

A. About three and a half, four feet.

Q. So that over-all you would be somewhere between six and seven feet above the water line as you stood in the [464] pilothouse of the tug?

A. Well, anyway that, I imagine.

Q. A foot or more one way or the other?

A. Yes.

Q. Now, is there a spotlight on the tug Lea Moe? Was there a spotlight at this time on the Lea Moe?

A. Yes; there was.

Q. And where is that spotlight located?

A. On the roof of the wheelhouse.

Q. And how is that spotlight controlled? How do you turn it? Can you turn it from your position in the pilothouse?

A. Yes; it is controlled from inside the pilothouse.

Q. Now, the two barges which you were towing on the night this accident occurred were loaded with lumber, were they not?

A. Yes; they were.

Q. To about what height above the deck of the barges?

A. I think about twelve feet.

Q. About twelve feet, and how far would the deck of the barges be above the water line?

(Testimony of Leonard Keezer.)

A. I would say about three and a half feet.

Q. So that the top of the lumber would be fifteen and a half feet or so above the water line, according to your estimate?

A. Approximately. [465]

Q. Now, from your position in the wheelhouse or pilothouse of the tug Lea Moe as you were towing these barges astern of your tug as you described, was it possible you to see the stern of the tow?

A. You would see the stern of the tow on one side, on the side that we were hooked onto.

Q. And why was that, Mr. Keezer? Why would that be so?

A. Because you could see down along that side.

Q. You were towing from one side of the tow then, is that right, really? A. Yes; I was.

Q. Was your view of the stern of the tow obstructed in any way?

A. I could not see over the lumber at some angles, no.

Q. Was it possible for you to see back toward the stern of the tow?

A. It was on the one side, yes, sir.

Q. From your position in the pilothouse?

A. Yes.

Q. Was it possible as you came up alongside the Cotton State for you to see back to the stern of the Cotton State from your position in the pilothouse?

(Testimony of Leonard Keezer.)

A. As I approached the Cotton State, I swung wide so I could see the stern.

Q. After you had made this swing and were heading in, that [466] is after the tug got inside the slip beyond or inside or inward from the stern of the vessel, were you then able to see the stern of the Cotton State from your position in the pilot-house? A. No; I couldn't.

Q. And why was that?

A. Because of the lumber.

Q. The lumber obstructed your view, did it not?

A. Yes; it did.

Q. Now, Mr. Keezer, you've been delivering barges and scows alongside vessels for many years in Everett, Washington, as I understand?

A. Yes, sir.

Q. Who provides the lines used to secure lumber barges when they are brought alongside ships?

A. The ship provides the lines.

Q. That's a customary practice, is it not?

A. Yes; it is.

Q. There was nothing unusual about the fact in this case that the ship provided the line?

A. No; there wasn't.

Q. Now, Mr. Keezer, as you towed these two scows you had your towing line extending from the tow bitts on the stern of the tug back to the forward starboard stanchion onto No. 25, is that correct? [467] A. Yes; I did.

Q. You weren't towing by a bridle arrangement

(Testimony of Leonard Keezer.)

so that you had an attachment to each corner of the forward end of the leading barge, were you?

A. No; I wasn't.

Q. Did that have the effect of causing your tow to be less maneuverable than if you had had a bridle on?

A. No; not on a short line. On a real short line, why it was very efficient that way.

Q. Then in that situation the barges in tow of the tug would not follow directly behind the tug, isn't that correct?

A. With two barges long towing in that way they followed very good.

Q. Would that mean that the tug and the two barges would be directly in line, one right behind the other?

A. Pretty much.

Q. Except that the tug would be off the forward starboard corner of the barges, isn't that correct?

A. Yes.

Q. You wouldn't be in the middle point of the forward end of the tow?

A. No; I wouldn't.

Q. Now, Mr. Keezer, from whom did you receive your orders as far as delivery of these scows was concerned?

A. I received them from the company dispatcher, the Tow Boat [468] Company dispatcher.

Q. From The Pacific Tow Boat Company dispatcher?

A. Yes.

The Court: Where is that office with respect to location?

(Testimony of Leonard Keezer.)

A. That's at 24th and Norton in Everett, your Honor.

The Court: Where is it with reference to the storage place from which your towing operation began?

A. It is right across a short stretch of water there from where the scows were tied, your Honor, before I picked them up.

Q. (By Mr. Howard): Now, Mr. Keezer, before you undertook to deliver these two scows alongside the Cotton State, had you received any orders or instructions from anybody on the Cotton State? Before you undertook to deliver these scows alongside the vessel, had you received any orders or instructions from the vessel?

A. You mean before I got to the ship?

Q. That's right. A. No; I hadn't.

Q. Your only instructions came from The Pacific Tow Boat Company?

A. Before I got to the ship, that is right.

Q. And, as I understand it, The Pacific Tow Boat Company [469] didn't tell you at which hatch the barges were to be delivered?

A. They told me that one went to number one hatch and one went to number four.

Q. Specifically, Mr. Keezer, did The Pacific Tow Boat Company tell you that the No. 25 was to go to the number one hatch or to the number four hatch?

A. They said one scow could go to the number one hatch and one could go to number four hatch.

(Testimony of Leonard Keezer.)

Mr. Howard: I move to strike that answer as not responsive to my question, your Honor.

The Court: Granted, and it is so ordered.

Q. (By Mr. Howard): Now, Mr. Keezer, my question is, as so Barge No. 25 did The Pacific Tow Boat Company indicate to you at which hatch that scow was to be delivered?

A. No; they didn't.

Q. Did The Pacific Tow Boat Company indicate to you at which hatch the No. 15 was to be delivered?

A. No; they didn't.

Q. At the time that you departed from West Cove to tow these barges, scows, up alongside the Cotton State, will you state whether or not it was dark or light at that time?

A. It was night.

Q. It was night. It was after sunset, in other words?

A. It was some time after sunset. [470]

Q. Now, as you left West Cove to deliver these barges to the Cotton State, did you have any lights or were there any lights burning on either the Barge No. 15 or the Barge No. 25?

A. No; there wasn't.

Q. Were there any lights burning on those barges or scows as you came up alongside the Cotton State?

A. No; there wasn't.

Q. What time did the tug and barges depart from West Cove?

A. Shortly after 6:00.

Q. With the barges?

A. With the barges.

(Testimony of Leonard Keezer.)

Mr. Howard: May we have the log of the tug, please?

The Clerk: Do you have the number handy?

Mr. Howard: It isn't in evidence yet. I would like to have it produced at this time. It was marked as an exhibit, your Honor, in the pretrial order.

The Court: All those connected with this case are excused for a short recess.

(Short recess.)

The Court: You may resume the interrogation.

Q. (By Mr. Howard): Mr. Keezer, you said that you departed West Cove shortly after 6:00 o'clock, around 6:00 o'clock?

A. Some time after 6:00 o'clock. [471]

Q. Well, how long after?

A. I couldn't say exactly. I wouldn't remember.

Q. 6:00 o'clock would be 1800 hours on the 24-hour clock, would it not?

A. Yes; it would.

Mr. Howard: Have we got the logbook marked now, Mr. Clerk?

The Clerk: It will be Libelant's Exhibit No. 16.

(A page from Lea Moe logbook was marked Libelant's Exhibit No. 16 for identification.)

The Court: What kind of logbook do you call that?

A. It's the logbook, the sheet is torn out, your Honor, and turned in every night.

(Testimony of Leonard Keezer.)

The Court: Is there just one logbook kept on your tug, kept where this is kept?

A. Yes, your Honor.

The Court: Is this it?

A. That's it.

The Court: And this is a page from the book itself, is that right?

A. Yes; it is, your Honor.

Q. (By Mr. Howard): Will you examine what is before you now as Exhibit 16 for [472] identification?

A. Yes, sir.

Q. Is that the page for the logbook of the tug Lea Moe for the day this accident occurred?

A. Yes; it is.

Q. And who made the entries in that logbook on that day?

A. I did.

Mr. Howard: I offer that in evidence, your Honor.

Mr. Biele: No objection.

The Court: Admitted.

(Libelant's Exhibit No. 16 for identification was admitted in evidence.)

Q. (By Mr. Howard): Now, Mr. Keezer, you may refer to that logbook to refresh your memory if you care to do so. According to the logbook, what time did you go to Pier No. 1 with the tug Lea Moe without a tow to check on the arrival of the Cotton State?

A. It must have been right around 6:00 o'clock.

(Testimony of Leonard Keezer.)

Q. Please refer to the entry at 1830 on Exhibit No. 16. Will you read that, please?

A. (Reading): "Check at Pier No. 1 to see if SS Cotton State needs help in."

Q. Does that refer to the time that you went to the Port Dock No. 1 to check on the arrival of the Cotton State? A. Yes; it does. [473]

Q. That would be 6:30 p.m.?

A. That's what it says, yes, sir.

Q. Now, what time did you leave on the second occasion when you had the barges in tow to proceed from West Cove to Port Dock No. 1?

A. It says here at 1840.

Q. Is that an accurate entry that you made in the log?

A. It don't appear to be. The log was written up some time after this accident happened.

Q. Do you mean to say that all of these entries were made up at some time after the accident?

A. Yes; they were.

Q. That refers to all of the entries in your log-book for this date? A. That is true.

Q. Why didn't you make the entries in the log-book at the time the events occurred?

A. I was too busy.

Q. Do you mean between 6:00 o'clock when the first entry occurs and 1840 when you have an entry that you took the scows from the craneways to deliver them alongside the Cotton State that you had no time to make any entry, is that correct?

A. No; that's not correct.

(Testimony of Leonard Keezer.)

Q. Were you short handed on the tug? [474]

A. No, we weren't.

Q. But you were so busy you couldn't make log entries?

A. We often write up our log later. We don't attempt to keep it right up to the minute.

Q. I see. Then these times in the log don't really mean anything, do they?

A. They don't mean very much in this case; it was written up afterwards.

Q. I see. Now, Mr. Keezer, what would you state to be the time that you arrived alongside the Cotton State with the barges in tow, where you had the leading barge, No. 25, at the point that you described where the forward end would be below the bridge?

A. I could only guess.

Q. What is your best estimate of that time?

A. It would be shortly after 6:00 o'clock?

Q. Shortly after 6:00 o'clock you had the barges alongside the ship, is that correct?

A. Yes.

Q. What is your best estimate of the time that the ship arrived at the dock and moored at the dock with the lines secured?

A. It must have been right around 1800 or 6:00 o'clock.

Q. Right around 1800. Now, what is your best estimate of the time that the accident [475] occurred?

A. I would say about 12 to 15 minutes after 6:00.

(Testimony of Leonard Keezer.)

Q. That would be about 6:15, 6:12 to 6:15 p.m.?

A. Yes.

Q. And in terms of a 24-hour clock, that would be about 1812 to 1815? A. Yes.

Q. Mr. Keezer, as the tug was towing the barges in to the slip and as the tug was off the face of the dock, did you use your spotlight at all to determine what the conditions were around the stern of the ship?

A. The visibility was good enough, I didn't need to use my spotlight.

Q. The answer is you did not use your spotlight?

A. I didn't, no.

Q. Then you did not cast your spotlight on the rudder or the propeller of the vessel to determine what their condition was?

A. No, I didn't.

Q. Now, as you continued on in to tow your barges into the position alongside the ship did you yourself have any conversation personally, that is between you and anyone on the deck of the Cotton State? A. No, I didn't.

Q. Were you able at any time as you came in alongside the ship with the barges to recognize anybody on the deck of [476] the ship?

A. No, I wasn't.

Q. Did you at any time, Mr. Keezer, report to anyone on the ship as to how many barges you had in tow or the length of the barges?

A. No, I didn't.

Q. Did you hear any of your crew make any

(Testimony of Leonard Keezer.)

report to anyone on the ship as to the length of the barges that you had in tow?

A. No, I didn't.

The Court: Repeat in this connection how long they were, each one of those two scows.

A. They were about 110 feet each, your Honor.

Q. (By Mr. Howard): As a matter of fact they are 110.4 feet in length each, are they not?

A. I didn't know about the four-tenths, no.

The Court: They are each about how much did you say?

A. 110 feet each, your Honor.

Mr. Howard: According to the admitted facts in the pretrial order, your Honor, each barge is 110.4 feet in length.

Q. (By Mr. Howard): Now then, Captain, or Mr. Keezer, the total length, the cumulative length of the two barges in the tow would be 220 feet, would it not? [477]

A. Yes, that is right.

Q. Plus the distance that you have described between the two barges where they were close coupled together, is that correct?

A. That would be correct.

Q. So that the total length of your tow, that is of the two barges, from the forward end of the leading barge to the after end of the trailing barge, would be something in excess of 220 feet?

A. Very little over 220 feet.

Q. A little over. Did you know as you came alongside the vessel what the distance was from the point below the bridge pilot house back to

(Testimony of Leonard Keezer.)

the after end of the vessel around the stern, around the rudder or the propeller?

A. I did not know exactly, no.

The Court: Do you know now?

A. No.

Q. (By Mr. Howard): Mr. Keezer, did you make a determination in your own mind or yourself as to where the trailing end of your tow would be with reference to the stern of the ship as you came alongside? A. Yes, I did.

Q. And what determination did you make in that connection?

A. I determined that I was far enough forward to clear, and [478] I held the scows into the ship so that they couldn't have got under the counter anyway.

Q. How did you make that determination, Mr. Keezer? Specifically, were you able to see the stern end of the tow with relation to the stern of the vessel as you came up alongside?

A. I couldn't see the stern of the vessel, no.

Q. So you made that determination without being able to see, is that correct?

A. I made it on judging from how far the scows extended on other ships like that.

Q. I see. I take it then, Mr. Keezer, that you used your own judgment in determining where the stern of your tow would be with respect to the stern of the vessel.

A. I stopped the scows where the man indicated, but I judged it would be plenty of clearance.

(Testimony of Leonard Keezer.)

Mr. Howard I move to strike that answer as not responsive.

The Court: It is stricken and the Court will disregard it.

Q. (By Mr. Howard): I take it, Mr. Keezer, that you made your own determination, used your own judgment, in determining where the after end of the tow would be with reference to the stern of the vessel? A. Yes. [479]

Q. In making that determination did you have anybody from your tug stationed on the after scow, No. 15, to report to you as to where the trailing end or the after end of the barge would be with reference to the stern of the vessel?

A. Hafey was on the corner of the scow towards the ship, and he could look back along the scows, but he wasn't back there.

Q. Hafey was on the corner of which scow?

A. Of the leading scow.

Q. Of the leading scow?

A. On the corner.

Q. My question, Mr. Keezer, was whether you had anybody from the tug or was there anybody on the barge, the trailing barge, to report to you as to where the after end of that trailing barge would be with reference to the stern of the vessel.

A. No, there was nobody on the trailing barge.

The Court: Was there anybody on it anywhere, not only at the stern but anywhere on the trailing barge?

(Testimony of Leonard Keezer.)

A. No, there wasn't, your Honor.

The Court: You may inquire.

Q. (By Mr. Howard): Did you get any reports from anyone on the barges as to where the after end of the barge would be with reference to the stern of the vessel? [480]

A. No, I didn't.

Q. I take it then that you made this determination by your own calculation as to where the trailing end of Barge 15 would be.

A. Yes, I did.

Q. Now, Mr. Keezer, did you communicate with anybody on the Cotton State with reference to this calculation that you made as to where your barges would lie alongside the Cotton State?

A. I communicated with the authority on deck through Mr. Hafey.

Q. Through Mr. Hafey? A. Yes, sir.

Q. Did you at any time directly or through Mr. Hafey advise the persons on the Cotton State as to where Barge 15 would come alongside the vessel, with reference to the stern of the vessel?

A. No, I didn't.

Q. Do you know now, Mr. Keezer, what the distance is from the forward end of the midship house on the Cotton State to a point astern or just aft of the propeller on the Cotton State?

A. No, I don't.

Mr. Howard: May the witness have before him, please, Libellant's Exhibit No. 5? [481]

(The exhibit was placed before the witness.)

(Testimony of Leonard Keezer.)

Q. (By Mr. Howard): May I ask you, Mr. Keezer, to describe where you found the damage to be on the Barge No. 15, with reference to the side and the forward or after end of the scow?

A. The barge went down so fast I didn't have any opportunity to see any damage.

Q. You can't say where the damage was?

A. I couldn't say, no.

Q. Now, Mr. Keezer, do you remember when your deposition was taken at Everett, Washington, for discovery purposes on September 26, 1958, in the office of The Pacific Tow Boat Company? Do you recall that occasion? A. Yes, I do.

Q. And do you recall that on that occasion you were asked questions by me concerning this accident? A. Yes, I do.

Mr. Howard: Referring to page 47 of the discovery deposition.

Q. Do you recall this question having been asked and this answer having been given by you, line 23:

“Q. Now, can you describe for us where the damage was sustained on the E-15 with reference to the forward or after end of [482] the barge as it was being towed on that night?

“A. Well, it was the after end.”

Question, top of page 48:

“Q. It would be the after port side—the after port quarter, is that correct? A. Yes.”

Do you recall those questions having been asked and your having given those answers?

(Testimony of Leonard Keezer.)

Mr. Biele: Your Honor, may this be continued to the next question and answer?

The Court: The objection and request are overruled and denied. What page are you reading from?

Mr. Howard: Page 47 and continuing to page 48, your Honor.

Q. (By Mr. Howard): Do you recall those questions having been asked and those answers having been given by you? A. Yes, I do.

Q. And are those correct statements?

A. Some of the things that appear in that disposition I wouldn't say are correct.

Q. I'm not referring to the deposition, some of it, I'm referring to these questions and answers, Mr. Keezer. Was this a correct answer that you gave to the question?

A. It was correct to the best of my knowledge, yes. [483]

Q. So that the damage was at the after end on the port side or port quarter of the barge E-15?

A. Yes.

Q. Now you have before you I believe, Mr. Keezer, Libelant's Exhibit No. 5. Will you please mark on there with an "LK" the point where you testify the leading end of barge No. 25 came up against the side of the Cotton State, using a red pencil, and mark that with an arrow and an "LK," please.

(Witness marks on exhibit.)

Q. Now will you also mark on that Libelant's Exhibit No. 5 the point on the ship, the Cotton

(Testimony of Leonard Keezer.)

State, from which the line was passed to the deck hand of the tug who was on the forward end of barge No. 25.

(Witness marks on exhibit.)

A. Initials, too?

Q. Yes. Put "LK-1" to distinguish that.

(Witness writes on exhibit.)

Mr. Howard: I would like to see that, your Honor, if I may.

The Court: You may do that.

(Mr. Howard examined the exhibit.)

Mr. Biele: May I see it?

The Court: Let opposing counsel see it.

(Mr. Biele and Mr. Crutcher examined the exhibit, after which it was returned to the witness.) [484]

Q. (By Mr. Howard): Now, Mr. Keezer, will you state whether or not Point LK as you have marked it on Exhibit No. 5 does or does not represent the point at which the leading edge of the barge was brought to rest stationary against the side of the ship as the line was secured that you have described? Does that represent the position?

A. That represents it, yes.

The Court: Was any timber between the leading barge and the side of the moored ship Cotton State?

A. No, none, your Honor.

Q. (By Mr. Howard): Mr. Keezer, do you see

(Testimony of Leonard Keezer.)

below the outline of the ship on Libelant's Exhibit 5 the measurements in terms of distance from that approximate point back to the stern of the ship?

A. Yes, I do.

Q. Would you be good enough, please, to take a pencil and paper and add those up and determine what the distance is back to the propeller of the vessel.

(Witness computing.)

Q. Please let me know when you're through, Mr. Keezer.

A. I get 212 feet, but that's not where the scow was fastened. I can't figure how much of this next dimension here would be included.

Q. By looking at the measurements below there can you give us an approximation, whether it be in terms of five, ten, [485] fifteen feet?

A. Well, I would think another fifteen feet.

Q. Another fifteen feet? A. Yes.

Q. From that point? A. Yes.

Q. Now, if you added fifteen feet onto that what would you get, Mr. Keezer? A. 227.

Q. That includes the distance to a point aft or astern of the propeller, does it not?

A. Very little aft according to the diagram.

The Court: Starting where?

A. Starting from the bridge to the after part of the propeller.

The Court: The after side of the bridge, the middle of the bridge——

(Testimony of Leonard Keezer.)

A. The forward part of the bridge, your Honor.

The Court: That is the length of the vessel back to the stern end from the starting point you have just mentioned, is that right or wrong?

A. Yes, that's right, your Honor.

The Court: How many feet?

A. 227, your Honor.

The Court: You may proceed. [486]

Q. (By Mr. Howard): And that covers a point beyond the propeller back to the rudder, is that correct? A. Yes.

Q. So that the point to the propeller would be something a little less than 227 feet, would it not?

A. Yes, I suppose it would be a little less.

Q. Yes. Now, Mr. Keezer, after you had this one line secured by your deck hand, Mr. Hafey, from the forward outboard stanchion on the No. 25 to a point on the Cotton State, were there any other lines secured between either the barge 15 or the barge 25 and the Cotton State to your knowledge?

A. No, there wasn't to my knowledge, no.

Q. Was it your intention to leave barge 25 at that point?

A. Yes, it was—to leave it later, you mean?

Q. To leave it at that point.

A. Temporarily.

Q. Temporarily? A. Yes.

Q. You hadn't completed your delivery of barge 25 to the Cotton State, had you?

A. No, I hadn't.

(Testimony of Leonard Keezer.)

Q. You intended to move it to another position later on?

A. I intended to move it farther aft after I had gotten No. 15 out of the way. [487]

Q. Did you intend to leave No. 15 at the point where it was laying along the after section and under the stern counter of the vessel?

A. No, I didn't.

Q. What was your intention with respect to No. 15?

A. To move it around to number one hatch.

Q. So you hadn't completed your delivery of No. 15 to the vessel either, had you?

A. No, I hadn't.

Q. In delivering barges to a vessel you secure them with more than one line, don't you, Mr. Keezer?

A. Yes.

Q. And you only had one line securing two barges at that time, is that correct?

A. That's correct.

The Court: Who determines how many lines you have at that place at such a time?

A. The ship.

The Court: The ship. The tug has nothing to do with that?

A. They put the lines down from the ship, your Honor, and they always have one on each end.

The Court: You may inquire.

Q. (By Mr. Howard): And you didn't have any lines at either end of the No. 15 attached to the Cotton State, did you? [488]

(Testimony of Leonard Keezer.)

A. No, I wouldn't—

The Court: Do not make statements alone. Use words or additional words needed to show on the record that it is a question being asked.

Q. (By Mr. Howard): Well, did you have any lines from the No. 15 either fore or aft to the Cotton State before this accident occurred?

A. No.

Q. Mr. Keezer, before this accident happened on January 10, 1957, were you aware of the fact that vessels such as the Cotton State when they arrived at a dock from sea would continue to turn their propellers either in forward rotation or aft rotation slowly for a period of time?

A. I was aware that some do.

Q. You were aware that some do?

A. That some do, yes.

Q. And for what reason?

A. I found out afterwards to cool their turbines.

Q. But you were aware that it was the practice of some vessels to do that?

A. I was aware that some—

Q. Before the accident occurred.

A. I was aware that some do and some don't, but I wasn't—I didn't have enough knowledge of it to know exactly which ones did and which ones didn't. [489]

Q. But you did know that some of them did?

A. Yes.

Q. Did you know at that time why they did it?

(Testimony of Leonard Keezer.)

A. No, I didn't.

The Court: Was it your intention before completing your tug's operation alongside the Cotton State to cut the E-15 loose from its following position in the tow and put it up opposite the number one hold or hatch of the Cotton State ahead of and in front of, taken from the standpoint of the forward end of the Cotton State, the formerly leading scow 25? Was that part of your work which you were engaged in or intended to be engaged in before your towing operation was completed?

A. Yes, it was, your Honor, that was my intention.

The Court: At the time you saw what you now interpret as the motion results following by the E-15 of the Cotton State's propeller when you said it was lurching and rocking, I believe, were you then in a movement of the tug intended to tie up again but this time with E-15 for the purpose of moving it out from the position where it then was to a position forward of the formerly leading barge E-25 to a position near number one hatch or hold of the Cotton State? [490]

A. That was my intention, your Honor, yes.

The Court: You may inquire.

Q. (By Mr. Howard): At the time you saw the No. 15 surging and rocking as you have described it you intended to attach your towline to the No. 15 and move it out? A. Yes.

Q. And at that time there were no mooring lines secured between the 15 and the Cotton State?

(Testimony of Leonard Keezer.)

A. No, there wasn't.

Q. The coupling lines between the No. 25 and the No. 15 were still secured then?

A. Yes, they were.

Q. And that was all that secured the No. 15 in place at that time? A. Yes, it was.

Q. Now, Mr. Keezer, from your position on the outer side, the outboard side of the barges where you made this observation, were you able to see along the after deck of the Cotton State?

A. I was able to see up above, yes.

Q. Up above? A. Yes.

Q. Could you see the main deck level?

A. Yes, I could.

Q. Over the top of the lumber? [491]

A. I think the stern of the ship was high enough so I could see it from the position I was in, if I wasn't right in the middle of the scow.

Q. Could you see below the main deck level?

A. Yes. You see, in the end of these scows where the two ends were together you would have quite a space where there wasn't any lumber.

Q. And where would that be with reference to the after deck of the Cotton State?

A. I could only guess, but I believe it would be between four and five hatch, something like that.

Q. And where would that put the after end of Barge No. 15?

A. At the time I got back there are you talking about?

(Testimony of Leonard Keezer.)

Q. Yes, when you made your observation of Barge 15 surging and rocking.

A. Well, it was pretty well aft.

Q. Was it in under the stern counter of the Cotton State? A. Yes, it was.

Q. Could you see under the stern counter of the Cotton State at that time to determine whether the propeller was rotating or turning?

A. No, I couldn't.

Q. Could you determine the position of the rudder at that time? A. No, I couldn't. [492]

Q. Now, at any time before you made this observation of the No. 15 surging and rocking had you checked to determine whether the propeller of the Cotton State was turning?

A. They generally have lights out when they're turning, so I didn't check.

Q. I beg your pardon?

A. I didn't check because I didn't see the lights when I came in.

Q. Had you asked anyone on the Cotton State whether the propeller was being turned?

A. No, I hadn't.

Q. In your testimony in answer to questions by Mr. Biele on Friday you indicated that someone on the Cotton State told you or told Mr. Hafey to put the line down at the forward end of the midship house. Did you hear that conversation yourself?

A. I didn't hear the conversation, no.

(Testimony of Leonard Keezer.)

Q. So you were not testifying to any conversation that you heard yourself?

A. I was testifying to where I seen him put the line down.

Q. Not to any conversation? A. No.

Q. Do you know of your own knowledge, Mr. Keezer, whether the barges moved at all in either direction, either forward or aft, alongside the ship after the line was [493] secured between the Cotton State and the forward end of Barge No. 25? Do you know that of your own knowledge?

A. I know that they moved—they were back farther later and we never move them, that one.

Q. Now let's pin this down as to time. When later did you find them further back?

A. After we had pulled the sunken scow, sinking or sunken scow out of there and in towards the beach.

Q. How long after the accident did you determine that one or the other of the barges had been moved?

A. It was farther back aft than we left it.

Q. Yes, and how long after the accident was that?

A. Oh, that might have been 45 minutes.

Q. 45 minutes or so. Were they loading or discharging lumber—were they loading lumber from the barge to the ship at that time?

A. I couldn't say.

Q. Is it possible that they were loading lumber at that time?

(Testimony of Leonard Keezer.)

A. It was in position where it was supposed to go at number four hatch.

Q. Up to the time that the accident occurred or up to the time when you observed No. 15 surging and rocking had you made any observation of your own personal observation as to whether the barges had moved forward or aft alongside [494] the ship?

A. No, I hadn't.

Mr. Howard: That's all I have.

The Court: Any further questions, Mr. Biele?

Redirect Examination

By Mr. Biele:

Q. Captain Keezer, when you were examined at Everett by Mr. Howard and he read you some questions and answers before, I'll ask you if you also gave this answer following the last question that Mr. Howard read:

"Q. How far from the after end?

"A. Well, I wouldn't have much way of knowing that. That scow went down real fast, and I don't know."

Do you recall giving that answer? A. Yes.

Q. Captain, will you refer to Exhibit 5, which is the capacity plan of the ship.

A. This is it.

Q. Captain, can you tell from that plan how wide the Cotton State is?

A. Not this top one.

Q. Can you tell from one of the other plans?

(Testimony of Leonard Keezer.)

Mr. Biele: Counsel, may it be agreed that [495] the pretrial order indicates that the vessel is 63 feet wide?

Mr. Howard: I will check that, Mr. Biele. I think you're right on it. Just a second, please.

(Brief pause.)

Mr. Howard: 63.1 feet.

Q. (By Mr. Biele): Now, Captain, when you brought the scows alongside were you aware that the propeller was substantially less than the width of the vessel? A. Yes, I was.

Q. Do you have any idea of approximately how far inboard the propeller was from the starboard side of the Cotton State?

A. It would be some distance in.

Q. Could you tell the Court approximately how far in it would be?

A. I would say ten, twelve feet.

Q. Captain, are you aware that the diameter of the propeller was 19 feet 6 inches?

A. Well, not before this happened, no.

Q. Well, if the diameter of the propeller was 19 feet 6 inches, how far in from the side of the vessel would the propeller be?

A. What did you say the width was?

Q. If the diameter of the propeller was 19 feet 6 inches, [496] that would put half of the propeller on one side of the ship and half on the other, would it not? A. Yes, it would.

(Testimony of Leonard Keezer.)

Q. How much of the propeller would be on the starboard side of the ship?

A. That would be nine and a half feet.

Q. What would be one-half of the width of the ship?

A. It would be something over 30 feet, a little over 30 feet.

Q. What would be the dimension inboard from the starboard side of the ship to the propeller?

A. It would be nine and a half from 30.

Q. And what would that come to?

A. It would be over 20 feet.

Q. Captain, as you brought the scows alongside on this night how did the scows trail with reference to the fore and aft line of the Cotton State? What I'm seeking to determine is whether the scows were parallel to the ship when they were landed alongside.

A. They were roughly parallel; a slight angle.

Q. At what angle were they to the ship?

A. A slight angle away from the ship.

Q. How far from the stern of the ship, or how far from the propeller of the ship would be the inboard distance from the inside or the port side of the scow to the propeller?

A. When the scow first was—the head end of the scow was [497] first——

Q. When the scows were secured.

A. They were laying out from the stern. They couldn't get under the counter in that position.

(Testimony of Leonard Keezer.)

Q. How far did the scow have to go inboard to get to the propeller?

A. I would judge around twenty feet.

The Court: Inboard of what?

A. They would have to pivot that much, your Honor, to get under the stern.

Q. (By Mr. Biele): Captain, how would they pivot to get under the stern?

A. The only way they could pivot is if there was slack let out on that line.

Q. What line are you referring to?

A. On the starboard or forward end of No. 25.

Q. Now, as the scows were tied up on this night with that line on the starboard side, would it have been possible for the scows to have gotten inboard into the propeller if that line had been secured in the way you saw it? A. No, it wouldn't.

Q. Now, Captain, what would be the effect if the line was not held?

A. The scows could pivot if the line was not held, as well as going backwards. [498]

Q. And how would the pivoting affect the disposition of the scows?

A. If the scows could pivot they could get in under the counter of the ship and into the propeller.

Q. Captain, could the No. 15 pivot from the No. 25 with the lines close coupled as you have described them to us?

A. No. The scows were made up real close coupled that way so as to be one unit.

(Testimony of Leonard Keezer.)

Q. Captain, were those scows pivoted with the stern end when you took aboard the line from the starboard stanchion of the tug, or the No. 25 to the tug?

A. No, they weren't. They were tight up against the ship there where the line was made fast.

Q. Captain, did you have any trouble seeing on this night? A. No, I didn't.

Mr. Biele: May I confer with Mr. Crutcher, your Honor?

The Court: Yes, you may.

(Brief pause.)

Q. (By Mr. Biele): Captain, is a Coast Guard license required for your job on the tug Lea Moe?

A. No, it isn't.

Q. Captain, the crew that you had on the Lea Moe consisted of yourself and two men, did it not?

A. Yes, it did. [499]

Q. Was that the normal crew that you carried in making a shift in and around Everett harbor such as this? A. Yes, it is.

Mr. Biele: I have no further questions, your Honor.

The Court: Anything further?

Recross-Examination

By Mr. Howard:

Q. Captain, you did have a little trouble seeing the stern of the tow on that night as you came up alongside the ship, didn't you?

(Testimony of Leonard Keezer.)

A. No, the visibility was good.

Q. But your view was obstructed by the barges and the lumber on the barges, wasn't it?

A. When I was approaching the ship and going by the stern the visibility was good.

Q. As you were going by the stern, but after you got past the stern into the slip your barges were then between you and the stern of the ship, were they not? A. Yes, they were.

Q. And with the load of lumber on those barges you could not see the stern of the ship, could you?

A. Yes, that is true.

Q. And you had no lookout on the after scow, did you? [500] A. No, we didn't.

Mr. Howard: That's all.

Mr. Biele: May I ask another question, your Honor?

The Court: You may. That will give opposing counsel a chance to ask another one, too.

Mr. Biele: Certainly.

The Court: He asked the last one.

Mr. Biele: Certainly, your Honor.

Redirect Examination

By Mr. Biele:

Q. Captain, when you came alongside the Cotton State were you told that one blade of the propeller had fourteen inches missing on it?

Mr. Howard: We'll object to that as not being proper redirect examination, your Honor.

The Court: The objection is sustained.

(Testimony of Leonard Keezer.)

Q. (By Mr. Biele): Captain, one other point. When you spotted the scows along the forward end of the bridge were you acting under orders from anyone?

Mr. Howard: Objected to as not proper redirect.

The Court: Sustained. You were going to ask just one question, you know, anyway.

Mr. Biele: That's all, your Honor. [501]

The Court: The witness is excused and may step down.

(Witness excused.)

The Court: At this time we will take a recess until after noon at 2:00 o'clock. All those connected with this case are excused until 2:00 o'clock this afternoon and may now retire.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.)

December 2, 1958—2:00 o'Clock P.M.

(All parties present as before.)

The Court: You may proceed with the case on trial.

Mr. Crutcher: Your Honor, at this time the respondents and claimants would like to call Mr. Stuchell.

The Court: Will Mr. Stuchell come forward. There was one person by that name called already.

Mr. Crutcher: Yes, your Honor. This is Mr. Ed Stuchell. [502]

EDWIN W. STUCHELL

called as a witness in behalf of respondents-claimants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crutcher:

Q. Will you please state your full name to the Court, Mr. Stuchell?

A. Edwin W. Stuchell.

Q. Where do you live, Mr. Stuchell?

A. Everett, Washington.

Q. And what is your occupation?

A. The lumber business.

Q. Are you a partner in the firm doing business as Eclipse Lumber Company in Everett?

A. I am.

Q. What is your position in that company?

A. General manager.

Q. How long have you been engaged in that business, Mr. Stuchell?

A. Since 1919.

Q. What was your position in the company in January of 1957?

A. General manager.

Q. Do you maintain your office at the company's mill in Everett?

A. I do. [503]

Mr. Crutcher: I ask the bailiff to hand to the witness Respondents' Exhibit A-2.

(The exhibit was handed to the witness.)

Q. (By Mr. Crutcher): Will you please refer to Respondents' Exhibit A-2 and not the position

(Testimony of Edwin W. Stuchell.)

of the Eclipse Lumber Company if it is shown on that chart or map? A. Yes, sir, that's right.

Q. Has that already been marked with a spot and some initials, Mr. Stuchell?

A. Yes, it has.

Q. There is no further need to refer to that, Mr. Stuchell. In connection with your business, Mr. Stuchell, do you own or charter scows or lighters?

A. Occasionally, in case of a large volume of—well, it hasn't been for years. We might charter lighters, but as a general rule we use our own lighters.

Q. And does your firm have a fleet of lighters?

A. We have four lighters.

Q. Are those used for the transportation of the lumber from your mill? A. Lumber, yes.

Q. To speak of those lighters for just a moment, Mr. Stuchell, is that a customary type of lighter?

A. That's a regular lumber carrier lighter.

The Court: What type? It has not been [504] described.

A. Wooden.

The Court: Mr. Crutcher.

Mr. Crutcher: Yes.

Q. (By Mr. Crutcher): Mr. Stuchell, would you describe to the Court just generally what type of lighters these are?

A. They are constructed out of wood. I think they are—they are 8 by 38 by 110 and they are rated when new 300 ton.

(Testimony of Edwin W. Stuchell.)

Q. Have those lighters been in use in Everett and in the Puget Sound area for very long?

A. They've been used I'd say since about 1929.

The Court: The question and the answer are not exactly clear. Does each of them refer to these specific ones that are involved here in this lawsuit?

Mr. Crucher: Well, your Honor, I was coming to that now.

Q. (By Mr. Crutcher): Are you familiar with the barge Eclipse 15, or the scow, excuse me——

The Court: May I interrupt you. Was your last answer with reference to any and every one of the barges operating in Everett or was it with reference to these two barges, E-25 and E-15, as to being this size and used in this manner?

A. No, all four barges, Judge, are exactly [505] the same size.

The Court: Pardon?

A. All four barges are the same size.

The Court: Are they like other barges used for similar purposes in and about the harbor of Everett?

A. Yes, sir.

The Court: You may proceed now. The Court has the information it desired.

Mr. Crutcher: Thank you, your Honor.

Q. (By Mr. Crutcher): What function does Eclipse Lumber Company perform so far as the loading of these lighters is concerned, Mr. Stuchell?

A. We load the lighters according to the ships' instructions.

(Testimony of Edwin W. Stuchell.)

Q. And after they are loaded who handles them?

A. Pacific Tow Boat Company.

Q. Have you had a long time arrangement with Pacific Tow Boat Company?

A. Pacific Tow Boat Company have handled our logs as well as our lighter handling since, well, I'd say it goes back to the time of—I'd say it goes clear back to 1904.

Q. Is there any written contract between the two companies regarding that?

A. No contract whatsoever.

Q. Is there any connection between Pacific Tow Boat Company [506] and Eclipse Lumber Company, that is——

A. None.

Q. Do they do all your towing?

A. I would say they did 85 per cent of our towing. They do all of our lighter towing and about 85 per cent of our log towing.

Q. Do you have any persons who are employed to work on board the lighters as a crew?

A. We have a regular loading crew at the mill.

Q. Well, I mean while they are in navigation.

A. None whatsoever.

Q. Is there any machinery on board these scows?

A. None.

Q. Are there any permanent light installations on these scows?

A. None.

Q. Does Eclipse have anything to do with the way in which these scows are managed after they leave the premises of the mill?

A. None whatsoever.

(Testimony of Edwin W. Stuchell.)

Q. Does Eclipse have anything to do with the loading procedure at a ship after these scows have been lightered to a ship?

A. None whatsoever.

Q. Did any of your personnel have anything to do with the [507] loading of lumber on board the Cotton State from the scows Eclipse 15 and 25?

A. None.

Mr. Crutcher: I have no other questions, your Honor.

The Court: You may inquire.

Cross-Examination

By Mr. Howard:

Q. Mr. Stuchell, are Scows E-15 and E-25 owned by the Eclipse Lumber Company?

A. They are, sir.

Q. Were they bare boat chartered to anybody in January of 1957? A. Sir?

Q. In January of 1957 were they bare boat chartered to anyone? A. Chartered?

Q. Chartered, bare boat charter.

The Court: To anyone, is that what you mean?

Q. (By Mr. Howard): To anyone.

A. No. We never charter our scows.

Q. Your company owned those two barges?

A. That's right.

Q. Do you know, Mr. Stuchell, what lights are required to [508] be carried on barges or scows when they are under way? A. No, sir.

(Testimony of Edwin W. Stuchell.)

Q. You don't know? A. No, sir.

Q. Do you know whether your barges or scows when being towed by The Pacific Tow Boat ever have lights on them?

A. Well, from just personal observation I know they put lights on, but that's no responsibility of ours.

Q. What kind of lights do they put on them, Mr. Stuchell? A. Lanterns.

Q. Lanterns. In other words, although the barges don't have any lighting generator or lighting installation of any kind they do sometimes have lanterns attached to them? A. Yes, sir.

Q. Were you aboard the Cotton State on the night that the accident occurred?

A. After the accident had occurred.

Q. You went down and went aboard after the accident occurred? A. Yes, sir.

Q. How long afterward, Mr. Stuchell?

A. I would say from 30 to 45 minutes. As soon as I got word about it I went down with my son.

Mr. Howard: I think that's all I have, your Honor. [509]

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Biele: Mr. Anderson.

Mr. Crutcher: Your Honor, may I ask that Mr. Ed Stuchell be excused as a witness?

Mr. Howard: No objection.

The Court: Mr. Stuchell is excused and may return to his own engagements if that is his wish.

JOHNNY A. ANDERSON

called as a witness in behalf of respondents, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Biele:

Q. Mr. Anderson, will you state your full name?

A. Johnny A. Anderson.

The Court: I did not quite get the first name.

A. Johnny. Johnny A. Anderson.

The Court: Do you spell it J-o-h-n-n-y?

A. Yes, your Honor.

The Court: And the middle initial?

A. A.

The Court: How do you spell Anderson?

A. A-n-d-e-r-s-o-n. [510]

The Court: You may inquire.

Q. (By Mr. Biele): What is your address, Mr. Anderson?

A. 74 Rainier Drive.

Q. Where is that?

A. Everett, Washington.

Q. Are you married?

A. Yes, sir.

Q. How old are you?

A. Twenty-five.

Q. What is your employment, Mr. Anderson?

A. Deck hand for Pacific Tow Boat Company.

Q. How long have you been a deck hand for Pacific Tow Boat Company?

A. Since 1952.

Q. Have you been a deck hand continuously since that time?

A. No.

(Testimony of Johnny A. Anderson.)

Q. What interruption did you have?

A. I was off in '57.

Q. When were you off?

A. From November till—from November of '57 till August of '58.

Q. What was the occasion for that?

A. A layoff.

Q. Are you still employed by Pacific Tow Boat Company now? A. Yes. [511]

Q. Mr. Anderson, were you aboard the Cotton State on the night when it towed the scows from West Cove——

Mr. Howard: Counsel, you said "Cotton State." I think you meant the Lea Moe.

Mr. Biele: I misspoke myself.

Q. (By Mr. Biele): Were you aboard the tug Lea Moe when it shifted the scows from West Cove to alongside the Cotton State? A. Yes.

Q. And what was your job at that time?

A. Deck hand.

Q. Mr. Anderson, did you have anything to do with the way in which the scows were made up?

A. No.

Q. Did you have anything to do with the tying up of the scows scow to scow? A. Yes.

Q. When was that accomplished?

A. In the cove, West Cove.

Q. Now, will you tell the Court what you did to tie the scows in the cove?

A. They were lashed tightly together by lines.

Q. And how were they lashed?

(Testimony of Johnny A. Anderson.)

A. Lines wrapped around the stanchions and tied.

Q. And where were those stanchions on the scows? [512]

A. Each corner of the scow.

Q. And how far apart were those stanchions?

A. How far apart?

Q. Maybe I should put it this way: Where were those stanchions located with reference to the sides of the scows?

A. Each side on the head ends.

Q. How far inboard from each side of the scow were the stanchions? A. About a foot.

Q. Are you aware that the scows were about 38 feet wide? A. Yes.

Q. How far would that put the stanchions apart? A. From each side?

Q. Yes, from side to side?

A. Approximately 36.

Q. 36 feet, you say? A. Yes.

Q. Now, as the scows were made up how much distance, if any, was there between the two scows?

A. Not more than a foot.

The Court: Is that fore and aft or sideways or what?

A. Fore and aft.

The Court: Not more than how many feet? [513]

A. Approximately a foot.

Q. (By Mr. Biele): Did that wrapping that you have described have a purpose? A. Yes.

Q. What was it?

(Testimony of Johnny A. Anderson.)

A. To keep them tight together.

The Court: Why did you want to keep them tight together?

A. So that they would be an intricate unit, integral unit.

Mr. Howard: A what kind of unit, sir?

A. Integral unit.

The Court: Integral is what you mean, is it not?

A. Yes, your Honor.

Q. (By Mr. Biele): Mr. Anderson, were you aboard either of the scows attached to the tug that brought the two scows up past the stern area of the Cotton State? A. No.

Q. Were you on the tug? A. Yes.

Q. As you passed the Cotton State's stern area did you see a flashing red light illuminating the stern area? A. No.

Q. About how far, Mr. Anderson, would you estimate the tug [514] passed off the stern area of the Cotton State? A. At least fifty feet.

Q. Now, at the time that you passed the stern area of the Cotton State did you have any trouble with visibility? A. No.

Q. Mr. Anderson, did you have anything to do with the way in which the scow 25 was secured to the Cotton State? A. No.

Q. Do you recall observing whether that was accomplished? A. Pardon?

Q. Do you recall whether the scow 25 was tied up to the Cotton State? A. Yes.

Q. Can you state to the Court where the for-

(Testimony of Johnny A. Anderson.)

ward end of the scow was with reference to the starboard side of the steamer? A. Just——

Q. When it was tied up.

A. In line with the superstructure.

Q. What part of the superstructure?

A. The forward part.

Q. What if anything did you do while the scow No. 25 was being tied up to the Cotton State?

A. I stood on the after deck of the tug.

Q. Incidentally, who tied up the scow 25 to the Cotton State? [515] A. The other deck hand.

Q. Where was he? A. On the scow.

Q. What is his name? A. Larry Hafey.

Q. While the No. 25 was being tied up could you state to the Court what the tug was doing, if anything? A. Pulling slowly ahead.

Q. Was there a line between the tug and the scow at that time? A. Yes, sir.

Q. Where was that line?

A. On the tow bitts.

Q. You're talking about the tow bitt on the——

A. On the tug.

Q. On the tug? A. Yes.

Q. Where was this line attached to the scows?

A. On the starboard stanchion, forward stanchion, on the barge.

Q. On which scow was that? A. 25.

Q. And that was the forward scow, was it not?

A. Yes, sir.

Q. Now, Mr. Anderson, while the scow was be-

(Testimony of Johnny A. Anderson.)

ing tied up did [516] the tug have occasion or did it push the scows back in any way?

A. No, sir.

Q. Could you state to the Court why the tug was holding the scows as the line was being secured?

A. So that they wouldn't drift back.

Q. What would have caused the scows to drift back? A. The wind.

Q. Where was the wind blowing from on this occasion? A. Southerly.

Q. And how did that strike the scows?

A. Just about in the head end, the face of the scow.

Q. Where was the wind coming from in relation to the Cotton State?

A. Just about off the bow.

Q. And it was blowing in which direction, blowing toward where?

A. Northerly, or it would be west.

Q. How was it blowing in relation to the stern of the Cotton State?

A. Towards the stern.

Q. Now, did you have anything to do after the line from the Cotton State was secured to the scow? A. I handled the line on the tug.

Q. Which line was that? [517]

A. The towline.

Q. What did you do with regard to that towline?

A. After the scow was tied up I took the towline in.

Q. How was that accomplished?

(Testimony of Johnny A. Anderson.)

A. By Larry Hafey taking it off and pulling it in on deck.

Q. Did he take the line off the scow?

A. Yes.

Q. Was it passed to you then?

A. Yes.

Q. Did you take the line aboard the tug?

A. Yes.

Mr. Howard: Objected to as leading, your Honor.

The Court: Sustained.

Q. (By Mr. Biele): What did you do with the line, Captain? I mean Mr. Anderson.

A. Put it on deck.

Q. Mr. Anderson, would you state to the Court what maneuvers if any the tug made after you took the line and put it on deck, that is the towing line?

A. Maneuvered around to get ahold of the tail scow.

Q. And how did the tug do that?

A. Pulled ahead so that he could back out around.

Q. Now, during the process of pulling ahead did the tug impart any motion to either of the scows?

A. No. [518]

Q. At any time prior to the tug casting, or prior to the time you took the line aboard, did the tug have occasion to push the scows aft?

A. No.

Q. Now, where was it, Mr. Anderson, that you became aware that there was trouble on this night?

(Testimony of Johnny A. Anderson.)

A. When we were getting in position to get a line on the other scow.

Q. When you say we, whom are you referring to? A. The captain.

Q. Where was the tug in relation to the scow, the Eclipse No. 15, when you became aware of trouble? A. Outside of the scow.

Q. Was it a distance off the scow?

A. Yes.

Q. Can you state to the Court how far it was away from the scow?

A. Approximately fifteen or twenty feet.

Q. What did you observe in the manner of trouble regarding the scow 15?

A. A rocking motion.

Q. Now, when you observed that motion had the tug touched No. 15? A. No.

Q. Where was Mr. Hafey when you observed him? [519] A. He was on the scow.

Q. Which scow was that? A. The 25.

Q. Now, after you observed this rocking motion, what if anything was done by the tug with regard to that scow 15?

A. Well, the other deck hand said that the barge was in trouble——

Mr. Howard: Objected to, your Honor.

The Court: Sustained. You cannot say what he said.

Q. (By Mr. Biele): What did the tug do, Mr. Anderson, after you became aware that the scow 15 was rocking?

(Testimony of Johnny A. Anderson.)

A. We maneuvered to get a line on it.

Q. And how did you maneuver to get a line on it? A. Got the stern in.

Q. Did you have to change the tug's heading?

A. No.

Q. Now, did you have occasion to go aboard either the No. 15 or the No. 25 after you observed the rocking? A. Yes.

Q. Which scow did you go aboard?

A. 15.

Q. What was the occasion for that?

A. To let the starboard line go between the scows.

Q. Now, was that one of the lines that you had secured [520] earlier in the evening?

A. Yes.

Q. What was the condition of that line that you observed then with reference to the way it was secured earlier in the evening at West Cove?

A. It was in the same condition.

Q. Who, if anyone, cast off the other coupling line? A. The other deck hand.

Q. Now, at the time that line was cast off what was the condition of the other coupling line?

A. O.K., the same.

Q. How were the scows in relation to each other at that time? Were they still an integral unit?

A. Yes.

Q. What was done, if anything, with the scow No. 15 after you took it in tow?

A. We towed it in on the beach.

(Testimony of Johnny A. Anderson.)

Q. Where did you put it?

A. Well, just right on the beach there.

Mr. Biele: I think that's all.

Cross-Examination

By Mr. Howard:

Q. What do you mean by "an integral unit," Mr. Anderson? A. One unit. [521]

Q. One unit that was made up of two scows coupled together, is that what you mean?

A. Yes.

Q. Now, as the scows were connected together by these coupling lines at West Cove there was no strain on the coupling lines then, was there?

A. How do you mean?

Q. You weren't towing on them when the coupling lines were attached at West Cove, were you?

A. No.

Q. There was after you towed them, wasn't there, there was a strain on those lines by reason of the tug towing the two barges? A. Yes.

Q. That would have a tendency to separate the two barges, would it not, Mr. Anderson?

A. Yes.

Q. A distance of several feet, would it not?

A. Just the stretch of the line.

Q. Yes. There is a stretch in the line?

A. Yes.

Q. Now, as you came around from West Cove, Mr. Anderson, as I understand you were on the

(Testimony of Johnny A. Anderson.)

deck of the tug. A. Yes.

Q. Were you able to see over the lumber on the barge to the [522] stern of the tow, to the trailing end of Barge No. 15? A. No.

Q. What was the condition then as far as light or darkness is concerned?

A. Well, it was sunset.

Q. It was after dark, wasn't it? A. Yes.

Q. Was the tug showing its navigation lights?

A. Yes.

Q. And towing lights? A. Yes.

Q. Were there any lights burning on either one of the scows or barges? A. No.

Q. Now, as I understand, you did not see any flashing red light around the stern of the Cotton State as you passed by? A. No.

Q. Will you state whether or not the spotlight on the tug was used to cast a beam on the rudder or propeller or the stern area of the Cotton State?

A. No.

Q. There was a spotlight available on the tug?

A. Yes.

Q. As you passed the stern of the Cotton State and started [523] to enter the slip with the barges in tow did you yourself see anybody on the stern of the Cotton State? A. No.

Q. Did you hear anybody shouting or giving orders from the stern of the Cotton State?

A. Yes.

Q. From the stern of the Cotton State?

A. From on the ship.

(Testimony of Johnny A. Anderson.)

Q. Whereabouts on the ship?

A. Around the four or five hatch.

Q. Around number four or five hatch aft of the midship house? A. Yes.

Q. But you didn't see anybody on the stern of the ship? A. No.

Q. Do you remember when your deposition was taken at Everett, Washington, on September 26, 1958, Mr. Anderson? A. Yes.

Q. Questions were asked by me and you answered under oath at that time? A. Yes.

Mr. Howard, Page 7, Counsel.

Q. (By Mr. Howard): Do you remember this question being asked and these answers having been given? I'll back up a little ways starting at [524] line 6.

“Q. Did you observe whether the propeller of the Cotton State was turning as you passed off the face of the dock? A. I did not.”

The Court: What page?

Mr. Howard: Page 7, your Honor, starting at Line 6.

Mr. Biele: Your Honor, I object to that. He is talking about whether there were persons on the deck of the stern or not, and the question and the answer start at Line 15.

The Court: You may read any question and any answer afterwards. You may ask him if he did this, that or the other.

Mr. Biele: He hasn't established it on his cross-

(Testimony of Johnny A. Anderson.)

examination, your Honor, and he thinks he can impeach him.

The Court: The objection is overruled.

Q. (By Mr. Howard): Did you make that answer to that question at that time?

A. Would you state the question again, please?

Q. (Reading):

“Q. Did you observe whether the propeller of the Cotton State was turning as you passed off the face of the dock? A. I did not.” [525]

A. I did.

Q. Is that a correct statement?

A. Right.

Q. And you made that answer? A. Yes.

Q. Next question:

“Q. Was there anything said about that aboard the tug at the time? A. No.”

Did you make that answer to that question?

A. Yes.

Q. That's a true answer, is it? A. Yes.

Q. (Reading):

“Q. Did you observe any signs or warning boards around the stern of the Cotton State? A. No.”

Is that a correct answer?

A. That's right.

Q. You made that answer? A. Yes.

Q. (Reading):

(Testimony of Johnny A. Anderson.)

“Q. Did you observe any persons on the deck or on the stern? A. No.”

Was that a correct answer? [526] A. Yes.

Q. And you made that answer at the time?

A. Yes.

Q. Then the statement which you made this afternoon is not correct when you state that you did see someone on the after deck of the vessel?

A. Well, I said that there was somebody around four or five hatch.

Q. Well, that's on the deck of the vessel, isn't it, Mr. Anderson? A. Yes.

Q. Did you or did you not see someone on the after deck of the vessel as the ship passed the stern and started into the slip?

A. If that's the after deck, yes.

Mr. Biele: Your Honor, I object to this. The original question was whether he heard anybody on the after deck.

The Court: The objection is overruled.

Mr. Howard: May I have that question back, your Honor?

The Court: You may. Mr. Reporter, read it.

(The reporter read back the last question and answer.)

Q. (By Mr. Howard): Your answer is you did see someone? [527] A. Yes.

Q. Then the answer that you gave in the deposition on September 26, 1958, is not a correct statement?

(Testimony of Johnny A. Anderson.)

A. Well, what do you class as the after deck now?

Q. Anything aft of the midship house is what I'm referring to, Mr. Anderson.

A. That wasn't what I was thinking.

Q. The next question:

“Q. If there had been any there, would you have seen them? A. If I had been looking, yes.”

Was that a correct statement? A. Yes.

Q. (Reading):

“Q. Well, were you looking? A. Yes, I was.”

Was that a correct statement? A. Yes.

Q. And it is your testimony now that you did see someone on the after deck?

A. I didn't pay much attention.

Q. Well, did you or did you not see someone on the after deck? A. Yes, there were—yes.

Q. How many?

A. I didn't count them. [528]

Q. Did you recognize them? A. No.

Q. What were they doing?

A. Talking to us.

Q. Talking to you? A. Hollering.

Q. Could you hear what they were saying?

A. No.

Q. Could you identify any of those persons on the deck of the ship? A. No.

Q. Now, Mr. Anderson——

(Testimony of Johnny A. Anderson.)

Mr. Howard: May the witness have Libellant's Exhibit 5, please?

The Court: He may.

(The exhibit was handed to the witness.)

Q. (By Mr. Howard): Will you state for us, please, where the line was secured on the ship leading to the forward outboard stanchion on Barge 25 as you have testified to? Will you state that in words first, please?

A. On the front—forward part of the superstructure.

Q. Mr. Anderson, was that line attached on the main deck or one deck above the main deck?

A. One deck above.

Q. Yes, and that would be aft of the forward end of the [529] midship house, would it not?

A. It was in the forward part of the midship house.

Q. Yes, but it would be some distance aft of the forward leading edge of the midship house, is that correct?

A. That's not too clear. The line was up in the forward part of the wheelhouse.

Q. Was it in line with the forward edge or was it forward or aft of the leading edge of the midship house, of the superstructure?

A. It was forward.

Q. Now will you take a pencil, please, and would you mark with an arrow showing where you now testify the line was attached leading from the ship

(Testimony of Johnny A. Anderson.)

to the barge, to the forward outboard stanchion on the barge. You're using a black pencil, aren't you?

A. Yes.

(Witness marks on Libelant's Exhibit 5.)

Q. Would you make an arrow out from that and put your——

Mr. Biele: Your Honor, this is improper cross-examination. We didn't go into this on direct.

The Court: Any response?

Mr. Howard: Well, your Honor, the question was most certainly gone into as far as the position of the barge when it came in.

The Court: What was it that was asked on [530] direct that you feel justifies this?

Mr. Howard: The witness testified on direct examination, "The forward end of No. 25 was in line with the forward part of the superstructure of the Cotton State," and that's precisely what I'm examining the witness about at the moment.

The Court: The objection is overruled.

Mr. Howard: May I have the last question?

The Court: You may.

(The reporter read the last question as follows: "Q. Would you make an arrow out from that and put your——")

Q. (By Mr. Howard): ——initials at the end of that arrow.

(Witness marks on Libelant's Exhibit 5.)

Q. Has that been done, Mr. Anderson?

(Testimony of Johnny A. Anderson.)

Mr. Howard: And when it is done, your Honor, I would like to see the exhibit.

The Court: Have you finished?

A. Yes, your Honor.

The Court: Let Counsel see it.

(Libelant's Exhibit 5 was examined by all Counsel, then returned to the witness.)

Q. (By Mr. Howard): Could you determine, Mr. Anderson, to what the line was attached on the ship? [531] A. No.

Q. Now, as I understand it you remained on the stern of the tug after the barge came alongside and this line was passed and secured to the outboard stanchion by your fellow deck hand Mr. Hafey, you remained on the stern of the tug? A. Yes.

Q. And did you continue to remain on the stern of the tug as the tug maneuvered around as you described to get back to Barge No. 15?

A. Yes.

Q. Did you continue to watch the barges during that period of time? A. No.

Q. What were you doing?

A. Getting the line ready again.

Q. Well, at times when you were not getting the line ready did you observe the condition of those barges? A. No.

Q. Mr. Anderson, will you state whether or not the barges moved aft after the line was secured?

A. I couldn't say.

The Court: The line from what vessel to what

(Testimony of Johnny A. Anderson.)

vessel did you last refer in your answer, Mr. Anderson?

Q. (By Mr. Howard): Mr. Anderson, referring again to your [532] deposition——

The Court: Just a minute. Read the last question and answer.

(The reporter read the question and answer as follows: “Q. (By Mr. Howard): Mr. Anderson, will you state whether or not the barges moved aft after the line was secured? A. I couldn’t say.”)

The Court: In making that answer to that question, what line, that is extending from what ship to what ship, were you referring to, Mr. Anderson?

A. The line leading from the barge to the ship.

The Court: Is that the one you referred to?

A. Oh, no, the line on the tug.

The Court: The line on the tug to what vessel?

A. To the barge, your Honor.

The Court: Is that what you were inquiring about, Mr. Howard?

Mr. Howard: I was inquiring, your Honor, as to whether the barge moved aft alongside the ship after the line was secured between the forward outboard stanchion of the scow and the position that he has [533] marked on Exhibit 5 on the ship.

The Court: What ship?

Mr. Howard: The Cotton State.

The Court: You better inquire then, because

(Testimony of Johnny A. Anderson.)

the answer finally made does not let the Court have that understanding.

Q. (By Mr. Howard): Mr. Anderson, did you observe whether the Barge No. 25 and Barge No. 15 remained stationary alongside the ship after this line had been secured by deck hand Hafey on the forward stanchion of the outboard corner of the No. 25 to the point which you have marked on the deck of the ship?

The Court: By "the line" what line are you referring to, Mr. Howard?

Mr. Howard: The mooring line for the barge.

The Court: Extending down from the ship, the Cotton State, to the barge, or——

Mr. Howard: Yes, your Honor. That is the line I'm referring to.

The Court: You may answer.

A. After it was tied up?

Q. (By Mr. Howard): Yes.

A. I didn't notice anything after that.

Q. Now, Mr. Anderson, referring to the occasion when your deposition was taken on September 26th—— [534]

Mr. Howard: Referring now, Counsel and your Honor, to Page 13.

The Court: Of this same deposition?

Mr. Howard: The same deposition, your Honor.

The Court: Page 13. Proceed.

Mr. Howard: Starting at Line 17.

Q. (By Mr. Howard reading):

(Testimony of Johnny A. Anderson.)

“Q. Could you determine from your position on the tug as it moved from the head of the tow around to a position off the trailing barge, whether the barges made any change in position from the time the tow line was cast off?

“A. Well, we pulled right up into position, and we got a line on——

“Q. And they remained in that position thereafter?

“A. I don’t know whether they remained. They must have because it didn’t slip back. They had a line fast up there. I don’t know what they did with it. They had control of it on the ship. Whether they moved it forward or backward by the line on the ship, I don’t know.”

Do you remember those questions being asked? [535]

A. Yes.

Q. And those answers having been given?

A. Yes.

Q. Including when you say, “They must have because they didn’t slip back,” do you remember making that statement?

A. (Witness nods his head.)

Q. You’re shaking your head affirmatively?

A. Yes.

Q. Is that a true statement? A. Yes.

Q. Is that your testimony today?

A. Would you ask me that question again, please?

(Testimony of Johnny A. Anderson.)

Q. Is that your testimony today? A. Yes.

Mr. Howard: That's all.

Redirect Examination

By Mr. Biele:

Q. Mr. Anderson, when you gave that answer at Everett do you recall the very last sentence in that, "Whether they moved it forward or backward by the line on the ship, I don't know," do you recall giving that answer? A. Yes.

Q. Is that your testimony today, that you don't know? A. Yes. [536]

Q. Mr. Anderson, when you went aboard the scows after they were rocking did you see any evidence that the scows were any further apart because of a strain on the line than they had been when you took them in tow at West Cove, or were they in the same position?

A. They were in the same position.

Mr. Biele: May I confer with Mr. Crutcher, your Honor?

The Court: You may do that.

(Brief pause.)

Mr. Biele: We have no further questions, your Honor.

The Court: Anything further?

Mr. Howard: No other question, your Honor.

The Court: You may step down.

Mr. Biele: Your Honor, may this witness be excused?

Mr. Howard: No objection.

The Court: Mr. Anderson may be excused and go on about his own business if he wishes to do so.

(Witness excused.)

Mr. Biele: Mr. Hafey. [537]

LAWRENCE S. HAFEY

called as a witness in behalf of respondents, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Biele:

Q. Mr. Hafey, will you tell the Court your full name? A. Lawrence S. Hafey.

The Court: Lawrence, L-a-w-r-e-n-c-e, is that right?

A. Yes, your Honor.

The Court: S. Hafey, H-a-f-e-y?

A. Yes, your Honor.

The Court: You may inquire.

Q. (By Mr. Biele): Where do you live, Mr. Hafey?

A. 1511 18th Street, Everett, Washington.

Q. How old are you? A. Twenty-four.

Q. Are you married? A. Yes.

Q. Do you have any children? A. Yes.

Q. How many do you have? A. One.

The Court: Pardon, how many?

A. One, sir. [538]

The Court: You may inquire.

(Testimony of Lawrence S. Hafey.)

Q. (By Mr. Biele): Mr. Hafey, what is your employment now?

A. Deck hand for Pacific Tow Boat Company.

Q. How long have you been employed by Pacific Tow Boat Company?

A. Since the spring of '52.

Q. What are some of the tugs you have served on?

A. Some of them?

Q. Yes.

A. Sea Roamer, Sea Monster, Lea Moe, Sea Horse, Sea Sled, Seaweed, Sea Vamp——

Q. Mr. Hafey, has your experience been continuous since 1952 with the Pacific Tow Boat Company?

A. No, there was a two year interruption from December of '53, to December of '55.

Q. What were you doing then?

A. I was in the Army then.

Q. What kind of service did you have in the Army?

A. I was a squad leader in the 82nd Airborne Division.

The Court: You do not speak very distinctly.

A. I was a squad leader in the 82nd Airborne Division, your Honor.

The Court: A squad leader?

A. Yes, sir.

The Court: Speak distinctly. [539]

Q. (By Mr. Biele): What type of duty did you have there, Mr. Hafey?

A. Airborne infantry.

Q. Is that the same as a paratrooper?

(Testimony of Lawrence S. Hafey.)

A. Yes, sir.

Q. Mr. Hafey, were you a deck hand on the tug Lea Moe in January of 1957, when she shifted some scows from West Cove to Pier 1 outboard the Cotton State?

A. Yes, sir.

Q. Did you have anything to do with the manner in which the scows were made up at West Cove?

A. Yes, I did.

Q. What job at West Cove did you have?

A. We coupled the two scows together.

Q. Did you do that by yourself or did you have have someone assist you?

A. No, Mr. Anderson assisted me.

Q. How were those scows made up in West Cove?

A. Right together with four and a half inch line.

Q. And how were the scows attached?

A. Together?

Q. Yes. A. Right close.

Q. How close together were they?

A. Oh, at the maximum they couldn't have been any more than [540] eighteen inches.

Q. Would you tell the Court where the lashings or attachments were between the two scows?

A. Between the two stanchions on either side of either scow, scow 25 and scow 15.

Q. Would that be between the stern stanchions on the No. 25 and the bow stanchions on the No. 15?

A. Yes, it was.

Q. Mr. Hafey, do you recall when the tug

(Testimony of Lawrence S. Hafey.)

brought the scows past the stern of the Cotton State? A. Yes.

Q. Did you observe a blinking red light on the stern of the Cotton State at that time?

A. No, I did not.

Q. After the scows and the tug were past the stern of the Cotton State, Mr. Hafey, did you have occasion to go aboard either one of the scows?

A. Yes, I did.

Q. Which one did you go aboard?

A. Eclipse 25.

Q. And how did you do that?

A. I just got off the stern of the boat onto the scow.

Q. Now, what was the occasion that you went aboard the scow No. 25?

A. There was a man on the Cotton State yelling, and we [541] wanted to see what he wanted.

Q. Where was this man on the Cotton State yelling from?

A. Oh, he was just a little aft of the house, the midship house.

Q. And where did you go on the No. 25?

A. Well, I was trying—I was on the deck at first and then I went up on top of the load.

Q. On top of the load were you able to converse with anyone on the Cotton State?

A. Yes, I was.

Q. Did you converse with anybody on the Cotton State? A. Yes, I did.

(Testimony of Lawrence S. Hafey.)

Q. What conversation did you have with this person on the Cotton State?

A. He informed me that we had the scows in the wrong position. He wanted Eclipse 15 up at the one and two hatch there and Eclipse 25 aft.

Q. Did you recognize this person that you talked with on the deck of the Cotton State?

A. No.

Q. Did you identify him as anybody from Pacific Tow Boat Company? A. No, sir.

Q. Was he anybody that you knew from Eclipse Lumber Company? A. No, sir. [542]

Q. Did this person appear to be one of the officers or someone connected with the ship?

A. He seemed to be someone of authority.

Mr. Howard: I move to strike the answer as not within the witness' knowledge.

The Court: The motion is granted and it is so ordered. You will have to answer the questions, Mr. Hafey, directly.

A. Yes, sir.

Q. (By Mr. Biele): Did this person with whom you talked appear to have authority with regard to the spotting of the scows?

A. Yes, sir, he did.

Q. Now, what were you told regarding the manner of the landing of the scows?

A. He said we could tie them up there at the—tie them there just forward the midship house right there, about even with the midship house, and he threw a line down for us.

(Testimony of Lawrence S. Hafey.)

Q. Now, where was this line thrown from?

A. Right up there by the forward part of the midship house.

Q. Whose line was it?

A. The ship's line.

Q. Was that done after the scows were brought alongside? A. Pardon me? [543]

Mr. Howard: Objected to as leading, your Honor.

The Court: Sustained.

Q. (By Mr. Biele): When was that line thrown down from the deck of the Cotton State?

A. Right after we had spotted the scows.

Q. Now, where did you spot the scows, Mr. Hafey?

A. Right at the forward part of the midship house.

Q. Was there any trouble in landing the scows alongside the Cotton State? A. None.

Q. Now, what if anything was done with this line that was passed down from the Cotton State?

A. I caught it on the starboard forward stanchion of Eclipse 25.

Q. Would you state whether that was the same stanchion or fastening that the tug's line had been fastened to or was fastened to? A. It was.

Q. How did you secure that line on that stanchion?

A. With a round turn around the stanchion tied with a bowline.

Q. Did you put the line under the towline or

(Testimony of Lawrence S. Hafey.)

over the towline? A. Yes, under it. [544]

Q. Why did you do that?

A. So I could get the tug's line off.

Q. Did you ever request or designate where you wanted the line from the Cotton State to be led from? A. No.

Q. Was that line secured on the Cotton State?

Mr. Howard: Objected to as leading.

The Court: Sustained.

Q. (By Mr. Biele): What happened to that line from the Cotton State that you put on the forward starboard stanchion?

A. They pulled it snug and secured it.

Q. Who pulled it snug and secured it?

A. The man aboard the Cotton State.

Q. Whereabouts on the Cotton State was that line secured?

A. It was just about straight across from us, maybe a little forward.

Q. Where was that with reference to the bridge of the Cotton State?

A. Oh, a little forward of it, I believe.

Q. Now, what if anything was done after the line from the Cotton State was secured?

A. I took the eye of the towline of the tugboat off the stanchion and passed it back to the——

Q. When you did that was it necessary to disturb the line [545] from the Cotton State to the scow? A. No, it was not.

Q. Why was that?

(Testimony of Lawrence S. Hafey.)

A. The line from the Cotton State was underneath.

Q. What did you do with that line from the tug to the scow?

A. Passed it to Mr. Anderson on board the boat.

Q. Briefly could you state what Mr. Anderson was doing while you were securing the line from the Cotton State to the scow?

A. Yes, he was working aboard the ship.

Q. At any time did the tug have occasion to push the scows aft? A. No, he did not.

Q. At any time did the tug have occasion to hold the scows from drifting back aft?

A. Yes, he did.

Q. How was that done?

A. The same way I before mentioned, by holding from the outboard stanchion into the ship.

Q. Which way was the wind blowing on this occasion? A. It was an offshore wind.

Q. How would that affect the scows?

A. It would drift them out.

Q. Was it necessary to hold the scows by the tug against the wind? [546] A. Yes.

Q. Mr. Hafey, what did the tug do after the line was passed from you to Mr. Anderson, that is the towing line?

A. Well, he started to maneuver to get back so we could pick off E-15.

Q. What did you do?

A. Well, I went aboard the lumber and started aft of the E-15.

(Testimony of Lawrence S. Hafey.)

Q. Did you go atop of the lumber on E-15?

A. No, I went atop of the lumber on E-25.

Q. You climbed up on top of the lumber on E-25?

A. Yes, I did.

Q. Where did you go then?

A. I went aft between the scows.

Q. Now, as you were going aft, Mr. Hafey, as you were going aft on the No. 15 did you have occasion to hear any unusual noises?

A. When I was between the scows I did.

Q. What noise did you hear?

A. Well, it was a noise from within the ship.

Q. Could you state to the Court what that noise sounded to you like?

A. Well, it sounded to me like the ship's engine, the ship's turbine, but——

Q. At the time you heard that noise could you see whether [547] the scows were in any trouble or not?

A. Oh, E-15 was bouncing pretty violently.

Q. When did you observe the trouble, if any, on No. 15?

A. Well, I noticed it bouncing like I said, and then I heard——

The Court: I believe he is trying to find out from you when you saw anything.

A. Yes, sir, I was trying to explain.

The Court: Yes, but you were not answering directly, Mr. Hafey, and I think you could.

A. Well, after that I shined my light down into the water, I seen this water rushing and then I

(Testimony of Lawrence S. Hafey.)

flashed my light into the hold and I seen the water rushing through the hold, and I——

The Court: That might have been yesterday or twelve years ago or just the day of this accident. Could you just tell him when and what time of the day or with reference to some movement or operational activity that you were then engaged in? Something to relate it to by way of time of occurrence, is what is encompassed in his question.

A. Yes, your Honor. It was right immediately after I seen the scow start to rock. I don't know what time it was, but it was at that time.

The Court: What were you doing when you first saw [548] the rocking of the scow?

A. I was just standing there, your Honor.

The Court: Standing where?

A. Between the two scows on Eclipse 25.

The Court: Was that after or before the tug cut loose its towline from the leading scow?

A. That was after, your Honor.

The Court: How many minutes, if you know?

A. Approximately three or four, somewheres around in that vicinity.

The Court: You may proceed.

Q. (By Mr. Biele): Mr. Hafey, am I correct that it was three or four minutes after the towline was taken in that you first saw this rocking and rolling?

A. Yes, sir.

Mr. Biele: May I confer with Mr. Crutcher?

The Court: You may do that.

(Brief pause.)

(Testimony of Lawrence S. Hafey.)

Q. (By Mr. Biele): Mr. Hafey, when you observed this rocking and rolling will you state what condition the coupling lines were in between the two scows?

A. They were still made fast and in fine shape.

Q. Were they in the same condition that you had tied them up at West Cove?

Mr. Howard: Objected to as leading. [549]

The Court: Sustained.

Q. (By Mr. Biele): Were they any different from what you had done at West Cove?

Mr. Howard: Objected to as leading.

The Court: Sustained.

Q. (By Mr. Biele): Will you describe to the Court the condition of the lines between the two scows when you first observed this rocking and rolling?

A. They were in good shape, the same way as we left them when we secured them in West Cove.

Q. Will you describe to the Court how much distance, if any, was between the two scows at that time?

A. Somewheres in the vicinity of eighteen inches, a little more or a little less.

Q. Now, at the time of the rocking and rolling that was observed by you, Mr. Hafey, had the tug, the Lea Moe, taken the No. 15 in tow yet?

A. No, it had not.

Q. Had it put a line aboard the No. 15?

A. No, it had not.

(Testimony of Lawrence S. Hafey.)

Q. What did you do, if anything, Mr. Hafey, after you observed the rocking and rolling?

A. Like I said, I shined my light down in there.

Q. What did you do thereafter?

A. Well, then I told—the boat was coming up alongside [550] and I yelled at the skipper and told him that the scow was sinking.

Q. What did the captain do on the tug?

A. He started maneuvering the boat into a position to pull her out of there.

Q. Did you have anything to do with the lines between the 15 and the 25 as the tug came alongside?

A. Yes, I cut off the—it would be the port side coupling line on the inside.

Q. Would those be the lines nearest the ship?

A. Yes, they would be.

Q. Who cut off or who unfastened the coupling lines on the starboard side?

A. Mr. Anderson.

Q. That would be the lines furthest away from the ship?

A. Yes, it would.

Q. Did you go aboard the No. 15 as it was towed out from the stern area?

A. No, I did not.

Q. Did you remain on No. 25?

A. Yes, I did.

Q. After the scow was towed away did you have occasion to go on the No. 25?

A. Yes, I did.

Q. How long after the scow was towed away was it that you [551] went on the lumber load?

A. Oh, possibly four or five minutes.

(Testimony of Lawrence S. Hafey.)

Q. Now, when you went aboard that lumber load did you have occasion to see whether the scow No. 25 was in the same position that it had been left when the tug cast off? A. Yes, I did.

Q. Was it in the same position?

A. It did not appear to be.

Q. What change, if any, had occurred?

A. It looked like it had come back aft about thirty or thirty-five feet.

Q. That would be from where?

A. From the midship house, the forward part of the midship house.

Mr. Biele: That's all.

The Court: You may cross-examine.

Cross-Examination

By Mr. Howard:

Q. Mr. Hafey, have you ever served on ocean going vessels, either merchant vessels or government vessels of any kind? A. No, I have not.

Q. Have you ever worked in the engine room of a vessel? A. No, I have not. [552]

Q. What do you mean when you say "offshore wind"? A. It was blowing offshore.

The Court: That is from the shore out to sea or from the sea in toward the shore?

A. It was blowing off the shore to the sea, sir.

Q. (By Mr. Howard): Blowing out towards the sea? A. Yes, sir.

Q. Now, Mr. Hafey, what was the height of the lumber on these barges?

(Testimony of Lawrence S. Hafey.)

A. Approximately sixteen feet, around there.

Q. Above the deck of the scow?

A. Around there, yes, sir.

Q. Was that pretty uniform on both barges, Mr. Hafey?

A. It was, I believe, to the best of my knowledge.

Q. At both ends of the barges, both fore and aft, was it leveled off pretty well?

A. Yes. There was a few—you know, once in awhile there was a wide spot there, but other than that they were fairly uniform.

Q. Was it light or dark as the Lea Moe was towing these barges from West Cove into the slip alongside the Cotton State?

A. It was after sunset.

Q. Was it dark or light? [553]

A. Well, it was fairly light. It would be dusk, it would be dark.

Q. It was dark, wasn't it? A. Yes.

Q. The tug had its navigation lights burning?

A. Yes, sir.

Q. Were there any lights on the scows?

A. No, sir.

Q. Now, as the Lea Moe came around the face or the end of the pier and turned and made the approach and entered the slip alongside the Cotton State was the spotlight from the Lea Moe ever shown on the stern or the rudder or the propeller of the Cotton State? A. I don't know.

(Testimony of Lawrence S. Hafey.)

Q. If it had been done would you have seen it?

A. I might have.

Q. Did you see it then?

A. No, I did not.

Q. Then it wasn't? A. I don't know.

Q. Now, where was this man on the steamer that you talked to?

A. He was just aft of the midship house, sir.

Q. And you can't identify him in any way?

A. No, sir, I can't. [554]

Q. You don't know whether he was a member of the crew or one of the officers of the ship or someone from shore? A. No, sir, I don't.

Q. What was your purpose in going aft on the Barge 25 after you had secured the line at the forward corner?

A. Well, I'd have to tie up the after end of E-25 and I'd also have to be back there to cut off E-15.

Q. In other words, you hadn't finished tying up the Barge 25?

A. I hadn't put the stern line out, no, sir.

Q. Did you notice whether there was a man aft of the midship house ready to pass you a line to tie up that barge?

A. Not at that time I never seen anybody, no.

Q. Later on did you notice whether there was someone there?

A. Yes, later on I finally got a line.

Q. When did you get the line?

(Testimony of Lawrence S. Hafey.)

A. Oh, it was possibly, or, fifteen minutes after the accident.

Q. Had you asked for the line?

A. Well, sir, there was nobody there for me to ask.

Q. You're sure there was no one on the after deck?

A. No one I could see, sir.

Q. Is it possible that there was someone there that you didn't see?

A. Oh, very possible. I could only see this side of the [555] ship, sir.

Q. Now, Mr. Hafey, when you started aft along the top of the load of lumber on this Barge 25 did you get any orders or instructions from anybody on the ship?

A. No, I did not.

Q. Did you request any information concerning the barges at that time?

A. No, I did not.

Q. You were the one man from the tug, as I understand, who was closest to the persons on the Cotton State?

A. Yes, sir.

Q. And you were also the man who happened to have the best view of what was going on, isn't that right?

A. I suppose so, sir.

Q. Could you see to the after end of your trailing barge No. 15 as you were up on top of the No. 25?

A. I could see the after part of the top of the load of E-25.

Q. Was there any light back there at all?

(Testimony of Lawrence S. Hafey.)

A. I mean of E-15. On E-15 you mean?

Q. On E-15.

A. No, there was no light on E-15, no.

Q. Could you determine where the after end of E-15 was with reference to the stern of the vessel?

A. Not real accurate. I mean—— [556]

Q. If there had been another man from the tug back there on that after scow he could have reported that to you, couldn't he?

A. I suppose he could have, yes, sir.

Q. And if there had been a light back there it would have made it a little easier to see where the stern of the tow was with reference to the stern of the vessel?

A. I don't really believe so, sir, no.

Q. Well, would a lantern not have made it more easy to determine the position of the stern of the barge?

A. I don't think so, sir.

Q. Now, Mr. Hafey, will you state whether or not as you walked aft along the top of the load of lumber on Barge 25, you made any observation as to whether the Barge 25 was stationary in its position alongside the ship?

A. Yes, they looked like they were pretty still then, sir.

Q. Did you at any time observe them moving in any direction?

A. I never actually noticed them moving in the extent that they were going along at any rate of speed, no, sir.

(Testimony of Lawrence S. Hafey.)

Q. In other words, during the time that you were tying up the barge at the forward outboard stanchion, continuing on through the time you climbed up on top of the load of lumber and as you walked aft along the top of the deck load on the Barge E-25 and climbed down to the point on Barge 25 where the two barges were close coupled [557] together you never observed the barges moving aft along the side of the ship, did you?

A. No, sir. I wasn't looking for them to be moving aft.

Q. If they had been moving aft would you have seen them?

A. If they would have been moving aft very fast I would have seen them, yes, sir.

Q. As a matter of fact they weren't moving aft, isn't that true, Mr. Hafey?

A. Well, sir, I don't really know because later on they were aft.

Q. Now, do you remember your deposition being taken on September 26th in Everett?

A. Yes, sir, I do.

Q. Do you recall the questions being asked that you answered under oath at that time?

A. Yes, I do.

The Court: Will you let me know the page? H-a-f-e-y.

Mr. Howard: H-a-f-e-y, your Honor.

The Court: What page?

Mr. Howard: Page 15, starting at the bottom of Page 14.

(Testimony of Lawrence S. Hafey.)

The Court: Line what?

Mr. Howard: Line 24, your Honor.

The Court: You may proceed. [558]

Q. (By Mr. Howard): This question was asked:

“Q. Did you observe whether the two barges were stationary alongside the ship’s side, or were they up against the ship’s side?

“A. They were lying against the ship’s side.”

Do you remember that question and that answer?

A. Yes, sir, I do.

The Court: That is not on Page 15, is it?

Mr. Howard: This is starting at the top of Page 15 now, your Honor.

The Court: You may proceed.

Q. (By Mr. Howard reading):

“Q. Were they moving forward or aft?

“A. No.”

Do you recall that question and answer?

A. Yes, sir, I do.

Q. (Reading):

“Q. They were stationary?

“A. Yes.”

Do you recall that question and answer?

A. Yes, sir, I do.

“Q. You are certain of that?

“A. It looked to me like they were stationary, yes.”

(Testimony of Lawrence S. Hafey.)

Do you recall that question and answer?

A. Yes. [559]

Q. (Reading):

“Q. Going back once again to the time when you were securing the mooring lines from the ship to the forward starboard stanchion on E-25, will you state whether or not that was secured tight, or was it left slack?

“A. The man aboard the *Cotton State*—he pulled it tight.”

Do you remember that question and that answer?

A. Yes, sir.

Q. Incidentally, Mr. Hafey, when did you last examine the transcript of your deposition? Have you looked at it today?

A. I can't remember if I looked at it today or not, sir.

Q. Were you in Mr. Biele's office this morning?

A. Yes, I was.

Q. Before you appeared in court. Did you look at the transcript of the deposition then?

A. I might have, yes, sir.

Q. You might have. The next question:

“Q. Was it tight before you left?

“A. It was snug. It wasn't really—you know what I mean by snug. It looked like it was made fast. It wasn't winched out, no.” [560]

Do you remember that question and that answer?

(Testimony of Lawrence S. Hafey.)

A. Yes, sir.

Q. (Reading):

“Q. From your experience will you state whether or not the line was secure and drawn tight in such a fashion as to hold the barge in that position? A. Definitely.”

Do you recall that question and that answer?

A. Yes, sir.

Q. And were those correct statements?

A. Yes, sir.

Q. And is that your testimony today?

A. Yes, sir.

Q. Did you ever make a particular observation as to what lights were burning around the stern of the vessel as the tug proceeded to tow the barges into the slip?

A. Just noticing and looking around there when we come in, yes, sir.

Q. Before this accident occurred, Mr. Hafey, was there any line secured in any way between Barge 15 and the Cotton State? A. No.

Q. And as I understand your testimony it was the intention of the tug Lea Moe to go back and pick off the E-15 and bring it up forward; is that right? [561] A. Yes, sir.

Q. Now, this noise that you heard that you testified to, what do you think that was, Mr. Hafey, do you know?

A. I stated it sounded like a turbine to me, some-

(Testimony of Lawrence S. Hafey.)

thing inside the ship, some kind of a ship's engine or motor or something.

Q. Do you know what the turning gear on a vessel consists of?

A. All I've heard about turning gear is what I've heard since this accident has occurred.

Q. Are you familiar with what kind of a mechanical device that is on a C-2 type vessel?

A. Just what I've heard explained in court, sir.

Q. Do you know how large a motor that has?

A. I heard it was a ten horsepower, sir.

Q. Do you know where that is located on the ship?

A. No, sir, I don't.

Q. Would you be able to state, Mr. Hafey, whether or not the noise you heard was from the turning gear motor on the Cotton State?

A. Never having heard a turning gear motor, but I have heard ship's turbines when we were docking ships, sir.

Q. You have heard the turbine as you were docking a ship?

A. I have heard ships, yes, sir.

Q. And you believe the noise then was from the turbine and [562] not from the turning gear?

A. I believe it was something from within the ship, yes.

Q. I'll ask you again, are you able to state whether or not the noise that you claim you heard was from the turning motor in the engine room of the Cotton State?

A. No, I am not.

(Testimony of Lawrence S. Hafey.)

Q. And as I take it you heard that noise at just about the time that you saw Scow 15 bouncing pretty bad? A. It was just before, yes.

Q. Just before. A matter of seconds before?

A. Yes, sir.

Q. Going back to your testimony, Mr. Hafey, as to how this line from the Cotton State which was used at the forward end of Scow 25, how you secured that around the stanchion, will you give me that again, please?

A. Yes, sir. I took a round turn around the stanchion and tied it with a bowline.

Q. With a bowline? A. Yes, sir.

Q. A bowline knot? A. Yes, sir.

Q. That was below the towline of the vessel?

A. Well, actually it would be. I brought the—the towline was lying at the bottom of the deck so I couldn't get it all the way up underneath, so I had to bring it [563] up through the eye and take a slack turn and then tie the bowline.

Q. Incidentally, did you determine whether that was still intact after this accident occurred before you left the Scow 25? A. Yes, sir, I did.

Mr. Howard: That's all.

Redirect Examination

By Mr. Biele:

Q. Was it intact? A. Yes, sir, it was.

Mr. Biele: That's all, your Honor.

The Court: Step down.

(Testimony of Lawrence S. Hafey.)

Mr. Biele: May this witness be excused?

The Court: Wait just a minute, Mr. Hafey. Where were you when the two scows were being towed alongside the vessel and just before they stopped the towing operation so far as the tug and towline were concerned?

A. Just before we brought them alongside the ship, sir, I was on the Eclipse 25.

The Court: The leading barge?

A. Yes, sir.

The Court: Were you at anytime while the vessel or any part of the tow, tug and tow, were [564] passing the ship's propeller area, were you on board the E-15 anywhere at any time?

A. No, sir.

The Court: Anything else?

Mr. Biele: I have no further questions.

The Court: You may step down.

Mr. Howard: No questions, your Honor.

Mr. Biele: May the witness be excused, your Honor?

Mr. Howard: I have no objection.

The Court: The witness may be excused and go on about his business if that is what he wishes to do.

(Witness excused.)

The Court: Any witness is welcome to remain after being excused if he should wish to do that.

Mr. Crutcher: Your Honor, we have one other witness.

The Court: Call him. We will have to take a recess just about five minutes later.

Mr. Crutcher: Mr. Wallace. [565]

WALTER D. WALLACE

called as a witness in behalf of respondents-claimants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crutcher:

Q. Will you please state your full name to the Court? A. Walter D. Wallace.

Q. Where do you live, Mr. Wallace?

A. 805 Rucker Avenue in Everett.

Q. What is your occupation?

A. I'm the manager of Pacific Tow Boat Company.

Q. That is one of the parties to this action, is it not? A. Yes.

Q. How long have you been in the towboat business? A. Since 1938.

Q. Would you state just briefly to the Court what your experience has been in the towboat business?

A. I started working for the Foss Company in Seattle while I was still in high school and I worked for them as I was going to college, and after the war I went to work for Pacific Tow Boat in Everett.

Q. Incidentally, what was your experience during the war?

A. I was a commanding officer of several ships, commissioned ships in the United States Navy.

(Testimony of Walter D. Wallace.)

Q. And since the war have you been—I guess we refer now [566] to World War II—have you been continuously engaged in the towboat business?

A. Except for during the Korean trouble when the Navy called me back for two years.

Q. How long have you been manager of Pacific Tow Boat Company in Everett?

A. Oh, the last three years.

Q. Now, in the course of your experience have you had occasion to deal with the lighters used for carrying lumber from shore to ships in Everett and other ports on the Pudget Sound?

A. We take care of all Eclipse mill's lighters that are used for that purpose.

Q. Is that a large shipper of lumber?

A. It all depends on what the market conditions are.

Q. Well, I appreciate that, but I mean does it do a substantial business in export shipments of lumber?

A. Yes, it does.

Q. What is the nature of your arrangement with Eclipse Lumber Company? Is there any written contract?

A. No, sir.

Q. Is it an oral arrangement?

A. Yes, sir.

Q. Would you state to the Court generally what the functions or duties of Pacific Tow Boat are so far as the [567] transportation or towing of lighters is concerned for Eclipse Lumber Company? And I refer first of all to the matter of the place and time at which you pick up the lighters.

(Testimony of Walter D. Wallace.)

A. Eclipse mill is some seven miles up river from what we call Bayside where steamships arrive.

The Court: At this time we will take a recess for about ten minutes.

(Short recess.)

The Court: You may proceed.

Mr. Crutcher: Thank you, your Honor. Would the reporter please repeat the last question?

The Court: That will be done.

(The reporter read the last question and answer.)

Q. (By Mr. Crutcher): Would you continue with your answer, please?

A. We can only tow loaded scows in the river at certain stages of the tide, and arrivals of steamships are somewhat changeable, and as a result as soon as the scow is loaded and is designated for a ship, normally at Pacific Tow Boat's convenience we pick up that scow at the proper stage of the tide and bring it to Bayside where it will be handy so that there will be no delay once the ship arrives in port to get the scows alongside. [568]

Q. And did this arrangement prevail in January of 1957? A. Yes, it did.

Q. Would you state what the practice is so far as manning of the lighters is concerned?

A. The lighters are unmanned. We furnish

(Testimony of Walter D. Wallace.)

everything in the way of requirements to move the lighters from the mill to storage and then to alongside the ship.

Q. Is it customary to station crew members on board the lighters during towage?

A. No, only during tying up periods.

Q. Is there a standard crew complement for the tugs used by Pacific Tow Boat Company in hauling lumber lighters?

A. Of the same eighteen boats that operate in Everett harbor, not in regards to the kind of a job they do but the size of the vessel, has a certain number required as crew. Most of the boats are two-men crew boats. There are some four boats, five boats I think, in the harbor altogether that carry three men, and the Lea Moe is one of that class.

Q. Now, by three men do you mean two deck hands and a master or captain? A. Yes, sir.

Q. Would you state what the practice is so far as the lighting of the scows or lighters is concerned in transportation down the Snohomish River and into the port of Everett? [569]

A. The tugs carry kerosene lanterns aboard which they place on the scow for lights when required.

Q. Are those lanterns furnished by Pacific Tow Boat Company? A. Yes, sir.

Q. Were you working at the office of Pacific Tow Boat Company in Everett on the evening of January 10, 1957? A. Yes, sir.

Q. And are you familiar with the delivery of the

(Testimony of Walter D. Wallace.)

scows E-15 and E-25 to the Cotton State on that evening? A. Yes, sir.

Q. Will you state whether you received any directions from Eclipse Lumber Company with respect to the delivery of those scows to the Cotton State on that evening?

A. Only several days before when we were informed that the scows were loaded.

Q. And what was the nature of that instruction or direction?

A. Merely that scows Eclipse 25 and 15 were now loaded for the Cotton State.

Q. Was there anything different in those instructions or directions than was usual in the case of delivering lighters for the Eclipse Lumber Company? A. No, sir.

Q. Was anyone from Eclipse Lumber Company present at the premises of Pacific Tow Boat Company or on board those vessels that evening? [570]

A. No, sir.

Mr. Howard: Objected to unless it is established that he was present.

Mr. Crutcher: Oh, I beg your pardon. I'll withdraw the question.

The Court: The answer is stricken.

Q. (By Mr. Crutcher): I misspoke myself, Mr. Wallace. Was anyone from Eclipse Lumber Company present at the place of business of Pacific Tow Boat Company on that evening?

A. No, sir.

Q. Was anyone from Pacific Tow Boat Com-

(Testimony of Walter D. Wallace.)

pany on board the Cotton State on that evening before the accident? A. No, sir.

Mr. Crutcher: I have no other questions.

Cross-Examination

By Mr. Howard:

Q. Mr. Wallace, were you aboard the Cotton State after the accident? A. Yes, sir.

Q. How long after the accident?

A. When I arrived the Lea Moe was just towing the Eclipse 15 away from the stern of the ship.

Q. How were you notified of the accident?

A. I had intended to be there as soon as I could that [571] evening in that we have actually three customers involved. One is the Eclipse mill, the other is the steamship company and the third is the stevedoring company, and I if possible always visit the job in the case of a ship and be sure everything is in order and get the requirements for the night.

Q. Were you on the dock, Port Dock No. 1 in Everett, when the Cotton State approached to make a landing? A. No, sir.

Q. Were you on the dock, Port Dock No. 1, Everett, before the gangway was lowered?

A. No, sir.

Q. What type of vessels were you in command of during World War II while in the Navy service?

A. SC's and PC's.

Q. Those being in laymen's terms what?

(Testimony of Walter D. Wallace.)

A. They are escort vessels assigned to convoy duty.

Q. How large?

A. A PC is 173 feet long and an SC is 110 feet.

Mr. Howard: That's all I have.

Mr. Crutcher: One other question.

Redirect Examination

By Mr. Crutcher:

Q. To clarify, Mr. Wallace, where were you at the time this [572] accident occurred on January 10, 1957?

A. I was at home, and I had a couple of long distance phone calls and as soon as I finished with those I left for Pier 1.

Q. Thank you.

Mr. Crutcher: I have no other questions.

The Court: Where is Pier 1 from the pulp mill, the Weyerhaeuser pulp mill near the Great Northern Railroad station in Everett?

A. Pier 1, your Honor, is about two hundred feet north of the Weyerhaeuser property.

The Court: It is in that dock or waterfront area right there in the vicinity of the railroad station and the Weyerhaeuser pulp mill in downtown Everett, Washington?

A. Yes, sir, it's immediately west of the railroad station.

The Court: You may inquire.

Mr. Howard: I have no other questions, your Honor.

Mr. Crutcher: No other questions, your Honor.

The Court: Step down.

(Witness excused.)

Mr. Crutcher: I would like to inquire of the clerk whether Respondents' Exhibit A-1 has as yet been [573] admitted in evidence.

The Clerk: It has been admitted, on the 26th.

Mr. Crutcher: Thank you. Has A-2 also been admitted?

The Clerk: Yes.

The Court: Will you pause for a moment, Mr. Clerk. May I see A-1.

(The exhibit was handed to the Court.)

The Court: You may proceed, Mr. Crutcher.

Mr. Crutcher: Thank you, your Honor. I merely wanted to inquire further whether Respondent's Exhibit A-3 has been admitted.

The Clerk: A-3?

Mr. Crutcher: Is there an A-3? I may have misnumbered this.

The Court: A-1 and A-2 are the only ones that at this moment are in my notes. Each of them has been admitted.

Mr. Crutcher: Thank you very much, your Honor. At this time the respondent Pacific Tow Boat Company rests and the cross-libelant and partnership doing business as Eclipse Lumber Company also rests, your Honor.

The Court: Is there any rebuttal?

Mr. Howard: I would like to call Mr. Kalem.

The Court: Come forward and be sworn as a witness. [574]

HAROLD R. KALEM

called as a witness in behalf of libelant, being first duly sworn, was examined and testified in rebuttal as follows:

Direct Examination

By Mr. Howard:

Q. Will you state your full name and your address?

A. Harold R. Kalem, K-a-l-e-m.

The Court: K-a-l-e-m?

A. Yes, your Honor.

The Court: Kalem, Harold?

A. Harold R.

The Court: You may proceed.

Q. (By Mr. Howard): Your address?

A. 2560-12th Avenue West, Seattle, Washington.

Q. Your age? A. Forty-four.

Q. What is your occupation?

A. Marine engineer.

Q. Do you hold any licenses issued by the United States Coast Guard for engineering purposes?

A. Yes, chief engineer steam and third assistant motor vessels.

Q. Third assistant—— [575]

A. Third assistant motor vessels, yes.

(Testimony of Harold R. Kalem.)

Q. Is that steam license limited in any way as to tonnage?

A. No, it's any horsepower.

Q. Any horsepower. How long have you held a chief engineer's license, Mr. Kalem?

A. Since 1944.

Q. Have you served as a chief engineer on vessels under your license? A. Yes, sir.

Q. Have you served as a chief engineer or a licensed assistant engineer on turbine-driven vessels?

A. Yes, sir.

Q. What companies have you worked for as a licensed engineer?

A. On turbine driven vessels?

Q. Yes, on turbine driven vessels.

A. Alaska Steamship Company as first assistant on the Terre Haute Victory, then I was with Matson Navigation Company on two of their ships, and Ispian Steamship Company, two of their vessels; I worked with Ispian from 1946 until 1950 as chief engineer on two vessels of theirs. I'm presently first assistant on the Schuyler Otis Bland, which I've been——

The Court: Spell it, please.

A. S-c-h-u-y-l-e-r, Otis O-t-i-s, B-l-a-n-d. [576]

Q. (By Mr. Howard): Is that a turbine driven vessel?

A. That is a turbine driven vessel.

Q. By whom is that vessel operated?

A. That is operated by American Mail Line.

(Testimony of Harold R. Kalem.)

Q. Have you ever been employed as an engineer on a vessel operated by States Marine Line?

A. No, sir.

Q. Now, Mr. Kalem, in terms of years about how many years have you served as a chief engineer or a licensed assistant engineer on turbine driven ships altogether?

A. Well, approximately about thirteen years, twelve or thirteen years.

Q. Have you also served as a night engineer or relief engineer? A. Yes, sir.

Q. And that's in a licensed engineer's capacity?

A. That's in a licensed engineer's capacity, yes.

Q. Now, Mr. Kalem, are you familiar with the type of turning gear and turning mechanism that is used on turbine driven vessels?

A. Yes, I am.

Q. Including C-2 type vessels?

A. C-2, too.

Q. And are you familiar with the procedures which are used in the engine room of the vessels operated by these [577] various companies that you have outlined with respect to the engaging or disengaging of the turning gear?

A. Yes, I am.

Q. Will you state what the procedure is on arrival at a dock from sea on a turbine driven vessel with respect to whether or not the engine room calls the bridge to obtain a clearance before engaging the turning gear and after receipt of a finished with engine bell?

(Testimony of Harold R. Kalem.)

A. The engine room does not call the bridge for permission to engage the jacking gear. When you get the finished with engine bell you immediately close the main stops on the boiler, drain your throttle and your lines, bleed them out, and engage the jacking gear, which takes approximately three minutes, four minutes, two minutes, it depends if you're on one boiler or if you're on two boilers.

Q. And why is that done immediately after the finished with engine bell?

A. To keep the main turbine from sitting any too great a length of time, because your rotor blade will warp.

Q. Is that same procedure followed on all vessels which you are acquainted with, turbine-driven vessels?

A. On all of them, and also on the Schuyler Otis Bland, because I do it myself.

Q. On any of the vessels on which you have served has it [578] been the routine to call the bridge first to get clearance before engaging the jacking gear after receipt of the finished with engine bell?

A. No, sir.

Q. While you're closing the boiler stops and draining the lines, draining the throttle into the turbine, will you state whether or not there would be any movement of the propeller?

A. Well, the propeller would move maybe one to two revolutions because you don't get way on the ship once she's tied up to the dock and so you use the astern throttle and when you see the indicator

(Testimony of Harold R. Kalem.)

move, then you open the stern throttle to stop her, and you keep doing that. You watch your gauge and you see your steam pressure is dropped off of your steam strainer and your throttles, all the steam is out of the lines at that time.

Q. Then if I understand correctly, as part of the procedure of closing down the plant and engaging the turning gear you would drain the steam out of the lines and out of the throttle?

A. That's right.

Q. In the course of which the propeller would turn one revolution or two revolutions in either direction?

A. That's correct. [579]

Q. And how long after that would you get the turning gear engaged?

A. Well, on this particular ship I am on, I'll quote that one, the junior engineer closes the stops. I am at the jacking gear. When I see him coming around the top grating and the stops are closed, the watch engineer or either the chief engineer will bleed the steam lines and the throttle, and then I immediately engage the jacking gear.

Q. What would happen, Mr. Kalem, if you allowed the steam to remain on the engine and did not take steps to drain the lines and engage the turning gear for a period of five minutes or more after the bell finished with engines was received?

A. Why, you would put a permanent set in your rotor, in the turbine rotor itself, or a sag.

Mr. Howard: That's all I have, your Honor.

The Court: You may cross-examine.

(Testimony of Harold R. Kalem.)

Cross-Examination

By Mr. Crutcher:

Q. Mr. Kalem, you have testified that you do not wait for any communication from the engine room before engaging the jacking gear. Does that mean that you don't expect to receive a communication from any other place on the [580] vessel, that is the after deck lookout?

A. You don't receive any communication. When they ring finished with engines, it is usually on the master's orders to the third mate or whoever happens to be on the bridge, and he rings the telegraph, and when he rings finished with engines, they're finished with engines.

Q. I appreciate that. What I'm asking is whether you proceed to start the jacking gear without receiving clearance from anyone on deck.

A. That's correct.

Q. Now, might it happen sometimes that there is something in the way of the propeller which would make it dangerous to the propeller to start the jacking gear immediately?

A. Well, I don't know what it would be, because when they're tying up they are very careful with their lines so that they don't get it in the wheel.

Q. So that you wouldn't expect that there would be anything to menace the wheel when you start the jacking gear?

A. Well, there wouldn't be anything. You're

(Testimony of Harold R. Kalem.)

coming in from sea and you come right alongside of a dock and the second officer is usually aft.

Q. Excuse me, Mr. Kalem, but I'm asking you the question, you start the jacking gear on the assumption that there is nothing menacing the propeller, isn't that true?

A. Well, that's the only way you could start it, because [581] you never get any orders from the deck department when to start the jacking gear or to engage it once you come in from sea.

Q. Well——

A. They are tying the vessel up. They know if there's anything back there. If there was anything there I imagine that they would notify you. I don't know.

Q. Yes, sir, thank you.

Mr. Crutcher: I have no other questions.

Mr. Howard: No questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Howard: That concludes the rebuttal, your Honor. May the witness be excused, your Honor?

The Court: The witness is excused. The libelant and cross-respondent now rests. Any surrebuttal?

Mr. Crutcher: None, your Honor.

The Court: How long do Counsel wish to argue this matter?

Mr. Howard: I would like to request twenty minutes in behalf of libelant, your Honor.

Mr. Biele: A similar time will be satisfactory to us, your Honor.

The Court: Very well. I will hear Counsel [582] from their present stations, and you may divide the twenty minutes between opening and closing in such portions as you wish to. The twenty minutes may be divided by you as between an opening argument and a closing argument.

Mr. Howard: Thank you, your Honor.

The Court: In whatever portions you wish to divide it.

(Thereupon, oral argument was presented to the Court by respective Counsel.)

ORAL OPINION

The Court: From the preponderance of the evidence in this case the Court finds, concludes and decides as follows:

That the Steamship Cotton State, after arriving from Seattle, completed its docking operations at the Port of Everett Pier 1 on January 10, 1957, at or about 6:00 o'clock p.m.

That after the docking operations were completed that vessel lay completely moored at that pier.

That at that time that vessel had displayed on its offshore stern area a standard size stationary sign-board type of warning of the propeller area and the danger to other craft of getting near that propeller [583] area and particularly the propeller on that vessel.

That in addition thereto there was overhanging that ship's side at or about the stern quarter on the starboard or offshore side the usual warning lights which were lowered to a point a few feet above the water in accordance with applicable regulations, and those lights were burning at all times material to this action.

That immediately after the "Finished With Engine" bell was received the engine room personnel, as was customary, started the turning engine or jacking engine on the Cotton State for the purpose of after-voyage conditioning of the vessel's engines and engine room machinery for their proper and usual care and protection during the dockside layup during the loading operations of the vessel.

That with the setting in motion and operation of such turning gear the propeller of the vessel began a very slow-rate revolution, which was at a rate in keeping with the customs and usages of vessels of this type, which is a turbine engine vessel.

That this slow revolving of the propeller of the Cotton State was accomplished by the proper and desired functioning of the turning gear.

That while the Cotton State was so lying at [584] rest at that dock as a completely and properly moored vessel under those circumstances, there came along within a few minutes afterwards—perhaps within not more than five or six minutes or thereabouts afterwards—the tug Lea Moe towing two lumber laden barges, the E-25 as the leading barge and the E-15 as the following or rear barge,

and as that tug and those barges passed the stern area and propeller area of the Cotton State they were making preparations for tying up alongside the Cotton State for the purpose of discharging the lumber cargo from both of those two barges.

That the master of the towing tug proceeded inward into the slip on the offshore side of the Cotton State until he reached a point considered by him as a suitable place to stop the forward movement of the tug and tow, and in that connection signaled to the chief mate or chief officer aboard the Cotton State that the tug and tow desired a mooring line from the Cotton State. At that time that tug had arrived at a point approximately under the midship house of the Cotton State, when the chief mate of the Cotton State undertook to pass down to the tug and tow a mooring line, which was passed by the mate down to the tugboat man, and that line was instantly engaged by one or more of the tugboat men in the service of the tug and tow to the offshore forward [585] stanchion of the leading barge, the E-25, the selection or determination of such place on the tug or tow for the fixing of that line being determined by those aboard the tug and tow.

That only one mooring line was passed to the tug and tow from the Cotton State, that one being all of the moorage line aid called for by those on board the tug and tow.

That after such attaching of that single mooring line, the tug, while negligently attempting to change the E-15 to the leading, and the E-25 to the

following or rear, position in the towing formation and to complete the tug's towing operation, unloosened its towing line, and the rear or following barge E-15 was negligently allowed by the tug to drift and it drifted under the stern counter and into and collided with the slowly revolving propeller of the *Cotton State*, at least two or more of the propeller blades separately striking separate blows on the after inshore or left side of the barge E-15, resulting in severe and extensive damage to that barge and resulting in danger of its sinking, but the tug, after the barge E-15 received such injuries and damages, towed the E-15 to a place of comparative safety away from the revolving propeller of the *Cotton State*.

That thereafter by automatic functioning the [586] power unit of the turning gear stopped as a result of the propeller striking the barge E-15.

That there is not sufficient evidence before the Court to support a finding of certain fact as to when, with reference to the collision of the barge with the propeller, the turning gear stopped functioning.

That at the time the tug and tow were passing the propeller area there were no navigation or other lights on the rear or following barge E-15 and there was no lookout on that barge.

That the tug and tow were at fault and were negligent in causing and contributing to cause the collision of the barge E-15 with the *Cotton State*'s slowly revolving propeller in the following particulars:

That the tug and tow, being the moving vessel, collided with the revolving propeller of the moored ship;

That the tugboat operator and the tug and the tow were negligent in failing to place and assist in placing and seeing that there was placed a navigation light upon the after end of the barge E-15;

That the tugboat operator and the tug were negligent and at fault for not having a lookout posted on the after end of the barge E-15.

That these omissions and acts on the part of [587] the tug operator and tug did proximately cause and/or did proximately contribute to causing the collision of the barge E-15 with the revolving propeller of the Cotton State.

That the barge E-15 and its owners were at fault and negligent in not providing navigation lights on the after end of the barge E-15; that the evidence in this case shows neither that the absence of such barge lights did not cause the accident and resulting injury and damage to the vessel's propeller nor that such failure to have such barge lights in use could not have caused or contributed proximately to cause such injury and damages.

That the Cotton State was in all respects a completely moored vessel at the time of the occurrence of the accident and that what it was doing with respect to operating its turning gear was in harmony with due and ordinary care for its own safety and for the safety of other vessels lawfully and prudently using and navigating the waters at and about the propeller area of the Cotton State.

That the Cotton State was not negligent or contributorily negligent in any material respect on account of any omission or commission on the part of the Cotton State respecting the occurrence of the [588] accident and its resultant damage here in question.

That the tug and tug operator jointly and severally were at fault on account of the matters and things connected with such accident, with respect to their relationship and the interrelationship between such tug and tug operator on the one hand and the Steamship Cotton State and its owner and operator upon the other hand.

That the barge owners and the barge E-15 were at fault in the particulars which the Court has already pointed out, and that so far as concerns the relationship of such barge owners and barge E-15 on the one hand and the Steamship Cotton State and its owner and operator on the other hand, the barge E-15 was, and the Cotton State was not, negligent or at fault with respect to the accident resulting in the damage sustained by the barge E-15.

That the libelant States Marine Corporation of Delaware, a corporation, is entitled to recover of and from the respondents and each and all of them the full amount of libelant's damages sustained as set out in the admitted facts of the pretrial order in this action.

That the respondents, The Pacific Tow Boat Company and the barge E-15 and/or owners, re-

cover nothing [589] from the libelant or cross-respondent herein.

That the libelant be awarded its taxable costs herein incurred against respondents and cross-libelants.

Are there any other issues or contentions set out in the pretrial order not here disposed of?

Mr. Crutcher: Yes, your Honor, the claim by Eclipse Lumber Company to recover its loss from Pacific Tow Boat Company.

The Court: From such preponderance of the evidence the Court finds, concludes and decides on that issue that The Pacific Tow Boat Company was negligent in the operation of the tug and tow in negligently failing to prevent the barge E-15 from colliding with the Cotton State's propeller; that as between The Pacific Tow Boat Company on the one hand and the E-15 and the latter's owners, the co-partnership Eclipse Lumber Co., on the other hand, the obligation of The Pacific Tow Boat Company was to furnish a crew and ordinary navigation lights for the E-15, but it negligently failed to do so; and that the owners of the barge may recover of and from The Pacific Tow Boat Company for all of Eclipse Lumber Company's damages sustained in this action and the taxable costs of such Lumber Company.

All other contentions inconsistent with the Court's findings, conclusions and decision and all other [590] issues are rejected and overruled and are disposed of by the Court's foregoing orally announced decision.

(Thereupon, at 5:30 o'clock p.m., Tuesday, December 2, 1958, an adjournment herein was taken.)

Reporter's Certificate

I, George F. Cropp, the undersigned, do hereby certify that I am an Official Court Reporter for the above-entitled Court, and that as such was in attendance upon and reported the hearing of the foregoing cause.

I further certify that the foregoing Statement of Facts, consisting of Volumes Nos. I, II and III, is a full, true and correct record of the proceedings had upon the hearing of said cause.

Dated at Seattle, Washington, this 26th day of January, 1959.

/s/ GEORGE F. CROPP,
Official Court Reporter.

[Endorsed]: Filed February 6, 1959.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, John A. Burns, Clerk of the United States District Court for the Western District of Wash-

ington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Designation of Counsel, I am transmitting herewith as record on appeal in the above-entitled cause, the following original papers in the file of the cause, to wit:

1. Libel in Rem and in Personam, filed Jan. 28, 1957.

5. Appearance of Bogle, Bogle and Gates as proctors for The Pacific Tow Boat Co., filed Jan. 31, 1957.

7. Appearance of Graham, Green and Dunn as proctors for co-partners doing business as Eclipse Lumber Co., filed Feb. 1, 1957.

8. Answer of The Pacific Tow Boat Company, filed Feb. 6, 1957.

10. Marshal's Return on Monition and Attachment, M/V Lea Moe, filed Feb. 6, 1957.

11. Marshal's Return on Monition and Attachment, Barge E-15, filed Feb. 6, 1957.

12. Release and Cost Bond with Marshal's return thereon (M/V Lea Moe), filed Feb. 6, 1957.

13. Release and Cost Bond with Marshal's return thereon (Barge E-15), filed Feb. 6, 1957.

18. Answer of E. W. Stuchell, et al., filed Oct. 28, 1957.

19. Substitution of proctors, Bogle, Bogle and Gates appearing in place of Graham, Green and Dunn for co-partners doing business as Eclipse Lumber Co., filed Feb. 28, 1958.

20. Cross-Libel of E. W. Stuchell, et al., filed Feb. 28, 1958.

21. Answer of Cross-Respondent States Marine Corporation of Delaware to Cross-Libel, filed March 12, 1958.

36. Pretrial Order, filed Nov. 21, 1958.

44. Findings of Fact and Conclusions of Law, filed Dec. 10, 1958.

45. Final Decree, filed Dec. 10, 1958.

49. Notice of Appeal by Pacific Tow Boat Company and E. W. Stuchell, et al., d/b/a Eclipse Lumber Co., filed Dec. 18, 1958.

51. Order Fixing Security, filed Dec. 29, 1958.

52. Supersedeas Bond of Appellants, filed Dec. 29, 1958.

54. Statement of Facts in three volumes (54a, 54b and 54c), filed Feb. 6, 1959.

55. Order for transmittal of exhibits, filed Feb. 9, 1959.

56. Statement of Points on Appeal of Pacific Tow Boat Co. and E. W. Stuchell, et al., d/b/a Eclipse Lumber Co., filed Feb. 9, 1959.

57. Designation of Contents of Record on Appeal of Pacific Tow Boat Co. and E. W. Stuchell, et al., d/b/a Eclipse Lumber Co., filed Feb. 9, 1959.

58. Appellee's Supplemental Designation of Record on Appeal, filed Feb. 10, 1959.

Libelant's Exhibits 1 through 16 inclusive and Respondent's Exhibits A-1 and A-2.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellants for preparation of the record on appeal in this cause, to wit: Filing fee, Notice of Appeal, \$5:00; and that said amount has been paid to me on behalf of the Appellants.

Witness my Hand and official seal this 10th day of February, 1959, at Seattle, Washington.

[Seal]

JOHN A. BURNS,
Clerk;

By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 16374. Pacific Tow Boat Company, E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr.; M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., Appellants, vs. States Marine Corporation of Delaware, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: February 11, 1959.

Docketed: February 20, 1959.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

